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In the Supreme Court of the United States

October Term, [illegible]

John Hill, [illegible], Appellants,

v.

[illegible]

[illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1921.

JOHN HILL, JR., ET AL., APPELLANTS,
v.
HENRY C. WALLACE, SECRETARY OF Agriculture, et al., appellees.
} No. 616.

APPEAL FROM THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLEES.

STATEMENT.

The general question is the constitutionality of the act of Congress approved August 24, 1921, known as "The Future Trading Act." [1]

The Board of Trade of the City of Chicago is a corporation organized under a special charter granted by the State of Illinois, February 18, 1859.[2]

On October 18, 1921, eight persons, somewhat vaguely and indefinitely described, requested the board of directors to cause the Board of Trade to institute a suit to have The Future Trading Act adjudged unconstitutional. The board of directors

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[1] Appendix A. [2] Appendix B, Laws of Illinois, 1859, p. 13.

who had full power to determine the policy of the corporation (Appellants' brief, 5) refused to comply with the request, giving as a reason that they feared to antagonize public officials, and stating that they intended to comply with the provisions of the act. The eight persons thereupon filed a bill naming as defendants the Board of Trade of the City of Chicago, a corporation; Joseph P. Griffin, president and director; James J. Fones and Theodore E. Cunningham, vice presidents and directors, and fifteen other directors; and John R. Mauff, secretary of the corporation; Henry C. Wallace, Secretary of Agriculture; David H. Blair, Commissioner of Internal Revenue; Charles F. Clyne, United States attorney; and John C. Cannon, collector.

The bill does not specifically allege that the complainants are all members of the Board of Trade. The opening allegation is "Your orators, * * * bring this, their bill of complaint in their own behalf (and in behalf of all other members of the Board of Trade of the city of Chicago who may wish to join therein or share in the relief granted herein)." The allegation in paragraph 14 of the bill (Tr. 14) of the effort made by complainants to secure action on the part of the managing directors indicates that in invoking the jurisdiction of the District Court, the complainants sought to avail themselves of Equity Rule 27, promulgated by this court November 14, 1912, viz:

STOCKHOLDER'S BILL.

> Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action, or the reasons for not making such effort.

The particular complainant who verified the bill does not swear that he is a member of the Board of Trade, a stockholder, or anything; nor does he swear that the suit is not a collusive one to confer jurisdiction on the district court; nor does he set forth with particularity the nature of the demand the complainants made on the officers and directors and the causes of their failure to obtain such action.

This bill alleges that the "chief purpose and function (of the Board of Trade) is to provide an exchange room where its members may meet daily between certain market hours and make with each other contracts for the purchase and sale of grain and other

products of the farm, and also to prescribe and enforce rules respecting the terms of such contracts and enforce, by disciplinary proceedings when necessary, compliance by its members with their said contracts, and for the settlement of disputes arising between its members out of their trades * * *." (Tr. 5.)

The eight persons seek to enjoin the Secretary of Agriculture and the other Government officials from cooperating with the corporation, its officers and directors, and to enjoin the latter from cooperating with the Secretary and the other Government officials, to put in full force and effect all of the terms and provisions of the act. They seek, although only a very small minority of the corporation, to substitute their opinion as to its true policy for that of the governing body. There is no controversy between the Government and the Board of Trade and its officers and directors.

It is significant that the defendants, the Board of Trade of the City of Chicago, as a corporation, and all of its officials and directors, as individuals, filed their joint motion to dismiss the bill for want of equity. Their refusal to bring the suit and their quick motion to dismiss the bill against them is conclusive that they accept, on behalf of the corporation, themselves and the public, The Future Trading Act as legal and beneficial. The bill was promptly dismissed.

The Chicago Board of Trade, in an attempt to comply with The Future Trading Act, has already

adopted substantial amendments to its rules and applied for designation as a contract market. On December 21, 1921, the Secretary of Agriculture made the designation with modifications and conditions to conform to the injunction order of this court issued December 12, 1921.[1]

ARGUMENT.

I.

THE HISTORY OF "TRADING IN FUTURES" PRIOR TO THE ENACTMENT OF THE STATUTE.

"Trading in futures" transactions and the evils attendant thereupon are subjects with which both legislative and judicial bodies have long been familiar. If extraneous light for the proper interpretation of the statute is helpful, the "history of the times" or "the environment at the time of the enactment of a particular law—that is, the history of the period when it was adopted"—may be resorted to. (*Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 463; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 316, 320; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 50; *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238).

In *Chicago Board of Trade* v. *United States* (246 U. S. 231, 238) this court, speaking through Mr. Justice Brandeis, said:

> The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even

[1] Appendix C, Application of Board of Trade, and designation and certificate of Secretary of Agriculture.

destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.

A. REPORT OF THE FEDERAL TRADE COMMISSION TO THE CONGRESS ON THE GRAIN TRADE.

PRESIDENT WILSON, on February 7, 1917, addressed a communication[1] to the chairman of the Federal Trade Commission, wherein, among other things, he said:

> It has been alleged before committees of the Congress and elsewhere that the course of trade in important food products is not free, but is restricted and controlled by artificial and illegal means. It is of the highest public concern to ascertain the truth or falsity of these allegations. No business can be transacted effectively in an atmosphere of suspicion. If the allegations are well grounded it is necessary that the nature and extent of the evils and abuses be accurately deter-

[1] Report of Federal Trade Commission on the Grain Trade, Sept. 15, 1920, Vol. I, Country Grain Marketing, p. 315.

mined, so that proper remedies, legislative or administrative, may be applied. If they are not true, it is equally essential that the public be informed, so that unrest and dissatisfaction may be allayed. In any event, because of the grave public interests which the food supply affects, the efficient performance of the duties imposed upon agencies of the Government requires that all the pertinent facts be ascertained. To this end the powers of such agencies should be made adequate, if in any respect they are now deficient.

Pursuant to the authority conferred upon me by the act creating the Federal Trade Commission, therefore, I direct the commission, within the scope of its powers, to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs and the products or by-products arising from or in connection with their preparation and manufacture; to ascertain the facts bearing on alleged violations of the antitrust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interest.

On September 15, 1920, the commission submitted to the Congress of the United States a full report entitled "Future Trading Operations in Grain." In that report, under the heading "Legal status of future trading" (p. 272), the term "gambling" is defined and described, with the statement that a discussion of the legal status of future trading "involves

the consideration, among other questions, of what constitutes gambling."[2]

B. THE SENATE COMMITTEE REPORT.

The Committee on Agriculture and Forestry of the Senate, after prolonged hearings at which an array of witnesses testified and much documentary evidence was offered, on July 8, 1921, submitted its report to the Senate on the bill for taxing contracts for sale of grain for future delivery, etc. *Inter alia*, the report states (67th Cong., 1st Sess., Sen. Rep. No. 212):

> It is believed that this bill will, by wiping out obvious abuses that are practiced on the grain exchanges, result in more stable markets, and thereby enable the producers to secure more nearly the market price for their grain than has been possible in the past.
>
> The purpose of this bill is to correct some practices on the grain exchanges and to authorize supervision of the grain-futures markets, but not to disturb any of their legitimate and useful functions. It will not put any curb upon free and unlimited hedging by elevator companies, exporters, millers, and other manufacturers of grain products. Its only purpose is to eliminate from the market some of the undesirable practices of professional speculators.
>
> Every member of a grain exchange who testified before this committee acknowledged that there is at times excessive speculation and undesirable speculation in the futures

[2] Copies of this report will be separately distributed for the use of the members of the court.

market. Furthermore, it was brought out that a few big traders at times influence prices—manipulate the market—by the great volume of their operations. Also, it was shown that a continually fluctuating, and not a stable, market is the desire of speculators. Such a market is against the interests of the producer; he must have stable prices in order to market his crops to the best advantage. A market without wide and frequent price fluctuations would greatly benefit the producer. The reason for this is that rapidly fluctuating prices can not be fully reflected in the prices paid at country stations, so an additional margin must be allowed when buying in the country. Also, when prices are fluctuating as they have done for several months past consignments of grain from country points to the terminal markets are more likely to find the bottom price of the day's range than the top. Fluctuations benefit the scalper, whether in the pit or at the cash grain tables, but work against the producer.

Furthermore, manipulation on the "short" or selling side of the market by big speculators, and "bear raids" by their followers, such as happen every year shortly before or immediately following harvest, play directly into the hands of European importers, who are enabled to buy millions of bushels of wheat in the futures market at a reduced price, which they later exchange for cash wheat.

In addition to curbing excessive speculation and manipulation, the bill authorizes the

> Secretary of Agriculture to provide means to prevent members of the exchanges from disseminating false and misleading reports on the market or on crop conditions. This in itself will be a check on the activities of professional speculators and tend to stabilize prices by curbing fluctuations caused by sensational reports.

C. PROCEEDINGS IN THE SENATE.

On August 9, 1921, the Senate, as a Committee of the Whole, resumed the consideration of the bill taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes.

SENATOR CAPPER, who had charge of the bill before both the committee and the Senate, made a full statement concerning the bill immediately preliminary to its passage.[3]

SENATOR CAPPER, in explaining the purpose of the bill, said (Ap. D, p. 77):

> The purpose of this bill, Mr. President, is to correct some of the evil practices of the professional speculators on the grain exchanges and to authorize supervision of the grain-futures markets, but not to disturb any of their legitimate and useful functions. It will not put any curb upon free and unlimited hedging by elevator companies, exporters, millers, and other manufacturers of grain products.

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[3] Appendix D, statement of Senator Capper, Aug. 9, 1921 (Cong. Rec., vol. 61, pp. 5220–5227, 67th Cong., 1st sess., Aug. 9, 1921.)

Briefly summarized, the evils in the marketing system which this bill undertakes to correct are:

(a) Market manipulation by large operators.

(b) Promiscuous and unrestricted speculation in foodstuffs.

(c) Dissemination of false crop information.

(d) Gambling in indemnities or "puts" and "calls."

(e) Arbitrary interference with law of supply and demand.

That these evils exist and should be eliminated is not challenged. They all grow out of dealings in futures. The bill does not touch any transaction in cash grain, for it is expressly provided in the definition section that it shall not include any cash grain or deferred shipment.

The plan of the legislation for correcting the evils is that future transactions shall be engaged in only on certain boards of trade, as, in fact, they now are. It then places the duty upon the boards of trade to correct the evils. It does not tell them how to do it. Their past experience has shown that they know how to do it. Their representatives agree that they will undertake to do it, and really all the legislation does is to compel them to do, under supervision of the Secretary of Agriculture, that which they say they ought to do and ought to have done a long while ago.

Every reasonable suggestion for safeguarding the machinery of the trade has been incorporated in the bill now before the Senate.

Senator Capper, in explaining the magnitude of the volume of trading in futures, further said (Ap. D, pp. 83, 97):

> The extent and completeness of its system for rounding up suckers explains how the Chicago Board of Trade must "sell" more grain every year than the entire globe produces. Approximately from eighteen and a half to twenty billion bushels of grain are sold at Chicago annually at a value ranging from fifteen to more than twenty billions of dollars.
>
> The private-wire houses reap fortunes from the gambling in futures. A single house will in three days sell as much grain as can be delivered on the futures market in a year. When their wires are not otherwise engaged, they are used for transmitting faked or exaggerated statements of market conditions to get the little fellows into the game for the sake of the commission revenue.
>
> Mr. President, the small gambler in futures has no more chance to win than the small gamester in a gambling house where they use marked cards and loaded dice.
>
> In its constant search for victims to play the market the Chicago Board of Trade does more fishing than goes on in all the Seven Seas. Every week day it casts its net over the United States and Canada. Every night it is drawn in. You can hardly imagine the extent of the catch. Some recent instances are impressive.
>
> *   *   *   *   *
>
> The Federal Trade Commission, in its recently published report, finds that future trad-

ing in grain amounts some years to more than 20,000,000,000 bushels, or three times all the grain produced in the world, while the actual amount of grain which changes hands at Chicago, where five-sixths of this trading is done, is a small fraction of 1 per cent of these billions of bushels. Transactions last year amounted to fifty-one times the amount of wheat produced in the United States.

That the abuses of the present marketing system should be corrected is not even open to dispute. It is the claim of representatives of the grain business that their correction should be left to the boards of trade themselves without any legislation. It is interesting to note, however, that in hearings before the committee of the House of Representatives 12 years ago, when a similar bill was before that committee, the representatives of the boards of trade admitted then, as they do now, the existence of abuses, but claimed then, as they do now, that the correction should be left to the boards themselves. During the 12 intervening years very little has been done to correct the abuses.

C. THE OPINIONS OF THE COURTS.

The court has long been familiar with the organization of the Chicago Board of Trade and its methods of transacting business. (*Nicol* v. *Ames*, 173 U. S. 509; *Clews* v. *Jamieson*, 182 U. S. 461; *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236; *Chicago Board of Trade* v. *United States*, 246 U. S. 231.) The Supreme Court of Illinois has frequently considered the same subjects. (*Pickering* v. *Cease*,

79 Illinois, 328; *Lyon* v. *Culbertson*, 83 Illinois, 33; *Pearce* v. *Foote*, 113 Illinois, 228; *Cothran* v. *Ellis*, 125 Illinois, 496; *New York & Chicago Grain and Stock Exchange* v. *Board of Trade*, 127 Illinois, 153; *Schneider* v. *Turner*, 130 Illinois, 28; *Soby* v. *People*, 134 Illinois, 66; *Central Stock Exchange* v. *Board of Trade*, 196 Illinois, 396; *Weare Commission Co.* v. *People*, 209 Illinois, 528, affirming 111 Ill. App. 116; *Board of Trade* v. *Dickinson*, 114 Ill. App. 295.)

II.

THE PRESUMPTION OF VALIDITY.

In *Nicol* v. *Ames* (173 U. S., 509, 514) this court sustained the validity of certain provisions of section 6 and a portion of Schedule A, therein referred to, of the act of Congress approved June 13, 1898 (c. 448, 30 Stat. 448, 451, 458), entitled "An act to provide ways and means to meet war expenditures, and for other purposes," commonly spoken of as the War Revenue Act. That act provided a tax "upon each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of trade, or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale or agreement of sale or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent." Mr. Justice Peckham, speaking for the court, said:

> It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of the Congress of the United

States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the lawmaking power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest. This is particularly true of a revenue act of Congress. The provisions of such an act should not be lightly or unadvisedly set aside, although if they be plainly antagonistic to the Constitution it is the duty of the court to so declare. The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.

This necessary authority is given to Congress by the Constitution. It has power from that instrument to lay and collect taxes, duties, imposts, and excises, in order to pay the debts and provide for the common defense and general welfare, and the only constitutional restraint upon the power is that all duties, imposts, and excises shall be uniform throughout the United States, and that no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration directed to be taken, and no tax or duty can be laid on articles exported from any State. (Constitution, art. 1, sec. 8 and sec. 9, subdivisions 4 and 5.) As thus guarded, the whole power of taxation rests with Congress.

III.

THE VALIDITY OF THE STATUTE.

A. THE MOTIVES OF CONGRESS IN LAYING THE TAX AND FIXING THE AMOUNT OF IT MAY NOT BE INQUIRED INTO.

1. This court has repeatedly said that it will not inquire into the motives of Congress.

McCray v. *United States* (195 U. S. 27, 59):

> It being thus demonstrated that the motive or purpose of Congress in adopting the acts in question may not be inquired into, we are brought to consider the contentions relied upon to show that the acts assailed were beyond the power of Congress, putting entirely out of view all considerations based upon purpose or motive.

Hammer v. *Dagenhart* (247 U. S. 251, 276):

> We have neither authority nor disposition to question the motives of Congress in enacting this legislation.

Treat v. *White* (181 U. S. 264, 269):

> The power of Congress in this direction is unlimited. It does not come within the province of this court to consider why agreements to sell shall be subject to stamp duty and agreements to buy not. It is enough that Congress in this legislation has imposed a stamp duty upon the one and not upon the other.

Fletcher v. *Peck* (6 Cranch. 87, 130, 131):

> The judiciary can not investigate the motives of the legislature even when bribery and corruption are alleged. (See also *Veazie Bank* v. *Fenno,* 8 Wall. 533; *Ex parte McCardle,* 7

Wall. 506, 514; *Doyle* v. *Continental Insurance Co.*, 94 U. S. 535, 541; *Calder* v. *Michigan*, 218 U. S. 591, 598; *Weber* v. *Freed*, 239 U. S. 325, 330; *Caminetti* v. *United States*, 242 U. S. 470: *Hoke* v. *United States*, 227 U. S. 308; *Lottery Cases*, 188 U. S. 321.)

It should be observed that in the last cited case the commerce power was used to discourage gambling in lotteries as the taxing power is now used to discourage gambling in the greatest staple of commerce.

2. The fact that the tax may be burdensome even to the extent of causing the discontinuance of the particular business affected will not influence the court in reaching its judgment. Complaints against the tax on that ground should be addressed to Congress.

Patton v. *Brady* (184 U. S. 608, 623):

> It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount, or the property upon which it is imposed.

Spencer v. *Merchant* (125 U. S. 345, 355):

> The judicial department can not prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.

Alaska Fish Co. v. *Smith* (255 U. S. 44, 48):

> Even if the tax should destroy business, it would not be made invalid or require compensation on that ground alone. Those who enter upon a business take that risk.

B. THE PROVISION FOR ADMISSION TO MEMBERSHIP IN THE BOARD OF TRADE OF A REPRESENTATIVE OF A COOPERATIVE ASSOCIATION IS NOT A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

The Future Trading Act does not compel admission to membership. The requirement of admission arises only upon the voluntary, affirmative act of the board of trade in applying for designation as a contract market, thus obtaining in the classification of taxes the benefit of an exemption, and it is then a matter of contract between the board and the Government. There is no compulsion upon the board to apply for designation. If it applies, it does so of its own volition for the purpose of escaping the tax and because, in consideration of relief from the tax, it is willing to comply with the conditions incident to designation. Also, there is no compulsion upon any member of the board to retain his membership on the board. He is free to dispose of it at any time that he becomes dissatisfied with the board's conduct. As to the board, if payment of the tax is preferable to designation and the burdens incident thereto, it is entirely free to make that choice and is then under no obligation to admit to membership. And as to the individual member, if payment of the tax is preferable to doing business under the requirements of a contract market, he is free to dispose of his membership on the board to whomsoever he will—to one of

the associations, if he wishes—and to trade either independently of the board or by or through its members.

It is by no means certain that the value of memberships will be depreciated by the requirement of admission. It may be that the increased demand incident to this provision will enhance the value in accordance with the general rule of supply and demand. It is usual when a commodity is open to a new line of purchasers for it to increase in value because of the consequent increased demand. The board of trade apparently does not believe that the value of memberships will be impaired because it appears from the bill that it refused to institute a suit at the request of the appellants and advised them that it intended to comply with the act. (Tr. 14.) Apparently, therefore, they do not believe that such admission to membership will have the result claimed by the appellants. They desire to obtain the benefit of the exemption and as the corporation has vested full power in them, neither a majority, much less a small minority of the members, can prevent them. (Ap. C, 70, amendment to rules.)

The use of the Board of Trade Building by representatives of cooperative associations which may be admitted to membership will not take the property of the board or its members without due process of law. The act does not specify the details under which such representatives are to be admitted to membership. It must be given a construction which will uphold it, if possible. It is clearly susceptible

of a construction that will uphold it, namely, as requiring that the applicant shall either pay the initiation fee or purchase the membership. The substance of this provision is that an exchange cannot refuse admission to a cooperative association upon any unreasonable ground or because of its distributing its earnings among its bona fide members. It is only fair to assume that the board fixed the initiation fee to cover the privileges incident to membership, including the use of its buildings or other property. Consequently, when such fee is paid, there can be no taking of property without due process. Also, upon the purchase of an existing membership, the purchaser acquires all the privileges incident thereto, including the use of the property of the board.

There is no taking of the property of the board or its members for public use. The act merely requires that as a consideration for the remission of the tax the board shall admit cooperative representatives to membership, but, as above pointed out, this must be upon substantially the same terms as others are admitted, namely, the payment of the initiation fee or the purchase of an existing membership. Also, neither is the board compelled to seek designation nor the individual member to remain in the board if it does seek designation. Hence, any loss that may accrue to either the board or the individual member is the result of a voluntary act on the part of the board or the member in return for a consideration.

Under the present rules of the board of trade, a corporation, while not admissible to membership,

may have two of its officers and stockholders admitted and trade on the exchange through them. (Appellants' brief, 23.) There is no limit to the number of corporations which may be thus admitted and there is no limit to the number of stockholders that a corporation may have. The earnings of these representatives are, of course, the property of the corporation and are distributed among its stockholders in accordance with the amount of stock owned by each. There is no legal difference between the admission of such representatives and the admission of representatives of cooperative associations. The membership in each case is unlimited and the earnings are distributed among the membership by similar methods. We fail to see, then, how the admission of a representative of a cooperative association can be any more injurious to the board of trade or its members than the admission of representatives of a corporation.

The Future Trading Act applies with uniformity. The tax is not laid on either persons or property. The tax is on the privilege of dealing in grain. The amount of the tax is measured by the number of bushels involved in the transaction. There is no classification as between dealers and growers, or as between dealers who actually own grain and dealers who do not. It is a classification of transactions. If the transaction is one in which the seller owns the grain, or there is a fair and reasonable probability that he will produce it before delivery date—that is, if he is the grower or the owner or renter of land on which the grain is to be grown—it is not taxed; but

if the transaction is one in which the seller is not such grower, owner, or renter the transaction is taxed. It is obvious that any dealer can bring his transaction within the exemption by becoming such owner, grower, or renter before he enters into the contract of sale. Also, a dealer may be taxed as to some transactions and not as to others, depending upon his status in this regard at the time of the sale. Hence, the act operates alike upon all persons in like circumstances, and does not make a distinction as between persons.

In making classifications and discriminations for taxing purposes, the legislature is allowed a wide latitude, and these are always upheld if reasonable and not arbitrary. In making such classification, the taxing power has always taken into account moral, economic, or social considerations. Thus the power to tax is used for the "general welfare." A discrimination of producers against dealers would be in accordance with discriminations which have been upheld by this court.

The Future Trading Act is essentially a taxing statute. This is not less so even if the court assumed that the tax was prohibitive, but there is nothing before the court which would justify the belief that the tax is prohibitive. The provisions of the statute, other than that which imposes the tax, are merely a method of classification. The power to classify subjects for taxation, in order to determine when the tax is imposed and when it is not, is certainly as great, and in my judgment *ex necessitate rei*, it is greater

than the like power of classification in the exercise of any other constitutional power. This being so, the propriety of the classification in this instance is justified in the case of *Lewis Publishing Company* v. *Morgan*, 229 U. S., 288.

That case arose under the Federal power over the mails, and in classifying first and second class mailing matter it was provided that a publication which did not show the names of its editors and publishers, stockholders and bondholders, the amount of its circulation, and which did not identify its editorial and reading matter from its advertisements, would not be entitled to the preferential rate.

In that case I vainly contended that it was in effect a censorship of the press, and was intended to prevent anonymity in its printed contents. That this was one of the purposes of the act could scarcely be questioned from the history of its enactment.

This court held that the classification was justifiable, and that in classifying mail matter it was within "the power of Congress in the interest of the dissemination of current intelligence to so legislate as to the mails, by classification or otherwise, as to favor the widespread circulation of newspapers, periodicals, etc., even although the legislation on that subject, when considered intrinsically, apparently seriously discriminates against the public and in favor of newspapers, periodicals, etc., and their publishers."

The court declined to hold that the only fact which the Congress could take in classifying the mails was the conditions of physical carriage. The court held

that if publishers desired to secure the privilege of preferential rates, it must be upon the terms which Congress would impose, and similarly we now contend that as the Government has the unquestioned power to impose a tax upon transactions in grain, if it desires to exempt any class of such transactions, it has the power to determine the conditions upon which such exemption shall be based.

In *McCray* v. *United States* (195 U. S., 27, 61, 62) discrimination in favor of butter producers as against oleomargarine manufacturers made by the oleomargarine statute was sustained.

In *American Sugar Refining Co.* v. *Louisiana* (179 U. S. 89, 92) a discrimination in favor of "planters and farmers grinding and refining their own sugar and molasses" as against persons and corporations engaged in the business of refining sugar and molasses, was sustained. In delivering the opinion Mr. Justice Brown said:

> The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this distinction in principle is valid. Of course, if such discrimination were purely arbitrary, oppressive, or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations, or other considerations having no possible connection with the duties of citizens as taxpayers, such exemption would be pure favoritism, and a denial of the equal protection of the laws to the less favored classes. But from time out of mind it has been the policy of this Government not only to classify for purposes

of taxation, but to exempt producers from the taxation of the methods employed by them to put their products upon the market. The right to sell is clearly an incident to the right to manufacture or produce, and it is at least a question for the legislature to determine whether anything done to prepare a product most perfectly for the needs of the market shall not be treated as an incident to its growth or production. The act is not one exempting planters who use their sugar in the manufacture of articles of a wholly different description, such as confectionery, preserves, or pastry, or such as one which should exempt the farmer who devoted his corn or rye to the making of whiskey, while other manufacturers of these articles were subjected to a tax. A somewhat different question might arise in such case, since none of these articles are the natural products of the farm—such products only becoming useful by being commingled with other ingredients. Refined sugar, however, is the natural and ultimate product of the cane, and the various steps taken to perfect such product are but incident to the original growth.

In *Flint* v. *Stone Tracy Co.* (220 U. S. 107, 158) a statute taxing corporations but exempting a partnership or private individual in the same business was sustained. In delivering the opinion Mr. Justice Day said:

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible

subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation see cases in the margin decided in this court, upholding the power.

In *German Alliance Insurance Co.* v. *Kansas* (233 U. S. 389, 418) a statute regulating the rates of insurance companies but excepting farmers' mutual insurance companies insuring only farm property was sustained. In delivering the opinion Mr. Justice McKenna said:

> A citation of cases is not necessary, nor for the general principle that a discrimination is valid if not arbitrary, and arbitrary in the legislative sense; that is, outside of that wide discretion which a legislature may exercise. A legislative classification may rest on narrow distinctions. Legislation is addressed to evils as they may appear, and even degrees of evil may determine its exercise. (*Ozan Lumber Co.* v. *Union County Bank*, 207 U. S. 251.) There are certainly differences between stock companies, such as complainant is, and the mutual companies described in the bill, and a recognition of the differences we can not say is outside of the constitutional power of the legislature. (*Orient Ins. Co.* v. *Daggs*, 172 U. S. 557.)

In *Rast* v. *Van Deman*, 240 U. S. 342, 357 (Trading Stamp Case), the legislature of Florida, under the taxing power, required all merchants conducting business with the use of trading stamps to procure licenses and to pay therefor license taxes which were

alleged to be prohibitory, with the result that the merchants were compelled either to abandon the use of the trading stamps or discontinue the business. Injunction was issued and an appeal taken to this court. In reversing the decree, Mr. Justice McKenna, speaking for this court, said:

> The ground of discrimination, simply and separated from the other attacks upon the statute, does not present much difficulty. The difference between a business where coupons are used, even regarding their use as a means of advertising, and a business where they are not used, is pronounced. Complainants are at pains to display it. The legislation which regards the difference is not arbitrary within the rulings of the cases. It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the court to arbitrate in such contrariety. *Chi., Burl., & Quincy R. R.* v. *McGuire,* 219 U. S. 549; *German Alliance Ins. Co.* v. *Kansas,* 233 U. S. 389, 413, 414; *Price* v. *Illinois,* 238 U. S. 446, 452.

It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury but obstacles to a greater public welfare. *Eubank* v. *Rich-*

mond, 226 U. S. 137, 142; *Sligh* v. *Kirkwood*, 237 U. S. 52, 59. And, we repeat, "it may make discriminations if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary." *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62, and the cases cited above (240 U. S. 357).

* * * * *

A lottery of itself is not wrong, may be fairer, having less of overreaching in it, than many of the commercial transactions that the Constitution protects. All participants in it have an equal chance; there is no admonishing caveat of one against the other. And at one time it was lawful. It came to be condemned by experience of its evil influence and effects. It is trite to say that practices harmless of themselves may, from circumstances, become the source of evil or may have evil tendency. *Murphy* v. *California*, 225 U. S. 623.

But no refinement of reason is necessary to demonstrate the broad power of the legislature over the transactions of men. There are many lawful restrictions upon liberty of contract and business. It would be an endless task to cite cases in demonstration, and that the supplementing of the sale of one article by a token given and to be redeemed in some other article has accompaniments and effects beyond mere advertising the allegations of the bill and the argument of counsel establish. * * *

The schemes of complainants have no such directness and effect. They rely upon something else than the article sold. They tempt

by a promise of a value greater than that article and apparently not represented in its price, and it hence may be thought that thus by an appeal to cupidity lure to improvidence. This may not be called in an exact sense a "lottery," may not be called "gaming"; it may, however, be considered as having the seduction and evil of such, and whether it has may be a matter of inquiry, a matter of inquiry and of judgment that it is finally within the power of the legislature to make. Certainly in the first instance, and, as we have seen, its judgment is not impeached by urging against it a difference of opinion. *Chic., Burl. & Quincy R. R.* v. *McGuire* and *German Alliance Ins. Co.* v. *Kansas, supra.* And it is not required that we should be sure as to the precise reasons for such judgment or that we should certainly know them or be convinced of the wisdom of the legislation. *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 126, 127. See also *Munn* v. *Illinois*, 94 U. S. 113, 132.

But it may be said that judicial opinion cannot be controlled by legislative opinion of what are fundamental rights. This is freely conceded; it is the very essence of constitutional law, but its recognition does not determine supremacy in any given instance. * * * *Otis* v. *Parker*, 187 U. S. 606, 608, 609.

That case illustrated the reach of the power of government to protect or promote the general welfare. It sustained a provision of the constitution of the State of California which made void all contracts for the sale of the

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stock of corporations on margin or to be delivered at a future day. The practice had been common, its evil was disputed. It was attempted to be justified by argument very much like those advanced in the case at bar, but this court decided that the legislative judgment was controlling (240 U. S. 364, 365, 366).

In *Tanner* v. *Little*, 240 U. S. 369, 382 (Trading Stamp Case), the legislative act required merchants furnishing, selling or using trading stamps to obtain a license from the auditor of each county for the privilege, and to pay for such license the sum of $6,000, which was alleged to be prohibitory. The District Court issued an injunction and the State appealed. In reversing the decree, and following *Rast* v. *Van Deman*, *supra*, this court, speaking through Mr. Justice McKenna, further said:

> Classification is not different in law than in other departments of knowledge. "It is the grouping of things in speculation or practice because they 'agree with one another in certain particulars and differ from other things in those particulars.'" *Billings* v. *Illinois*, 188 U. S. 97, 102. Upon what differences or resemblances it may be exercised depends necessarily upon the object in view, may be narrow or wide according to that object. Red things may be associated by reason of their redness, with disregard of all other resemblances or of distinctions. Such classification would be logically appropriate. Apply it further: make a rule of conduct depend upon it and distinguish in legislation between red-haired men and black-haired men and the

classifications would immediately be seen to be wrong; it would have only arbitrary relation to the purpose and province of legislation. The power of legislation over the subject matter is hence to be considered. It may not make the distinction adverted to but it may make others the appropriateness of which, considered logically, may be challenged, for instance: between sales of stock upon margin or for immediate or future delivery (*Otis* v. *Parker*, 187 U. S. 606); between acts directed against a regularly established dealer and one not so established (*Central Lumber Co.* v. *South Dakota*, 226 U. S. 157); in an inspection law, between coal mines where more than five men are employed and coal mines where that or a lesser number are employed (*St. Louis Cons. Coal Co.* v. *Illinois*, 185 U. S. 203); and a like distinction in a workmen's compensation law (*Jeffry Mfg. Co.* v. *Blagg*, 235 U. S. 571); between a combination of purchasers and a combination of laborers (*International Harvester Co.* v. *Missouri*, 234 U. S. 199); between residents and nonresidents (*Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364); in a law requiring railroads to heat passenger coaches, between roads of 50 miles and roads of that length or less (*N. Y., N. H. & H. R. R.* v. *New York*, 165 U. S. 628; see also *Dow* v. *Beidleman*, 125 U. S. 680; *Postal Telegraph Co.* v. *Adams*, 155 U. S. 688); between theatres according to the price of admission (*Metropolis Theatre Co.* v. *Chicago*, 228 U. S. 61); between landowners as to liability for permitting certain noxious grasses to go to seed on

the lands (*Missouri, Kansas & Texas Ry.* v. *May*, 194 U. S. 267); between businesses, in the solicitation of patronage on railroad trains and at depots (*Williams* v. *Arkansas*, 217 U. S. 79); and a distinction based on the evidence of the qualifications of physicians (*Watson* v. *Maryland*, 218 U. S. 173, 179).

Those were instances (and others might be cited) of the regulation of conduct and the restriction of its freedom, it being the conception of the legislature that the regulation and restriction was in the interest of the public welfare. Those classifications were sustained as legal, being within the power of the legislature over the subject matter, and having proper bases of community.

In *Alaska Fish Co.* v. *Smith* (255 U. S. 44, 48, 49) a discrimination against fertilizer and fish oil made from herring as against such products made from other fish was sustained. In delivering the opinion Mr. Justice Holmes said:

> We are content, however, to assume for the purposes of decision that, not to speak of other licenses, the questioned acts do bear more heavily upon the use of herring for oil and fertilizer than they do upon the use of other fish. But there is nothing in the Constitution to hinder that. If Alaska deems it for its welfare to discourage the destruction of herring for manure and to preserve them for food for man or for salmon, and to that end imposes a greater tax upon that part of the plaintiff's industry than upon similar use of other fish or of the offal of salmon, it hardly

can be said to be contravening a Constitution that has known protective tariffs for a hundred years. (*Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357.) Even if the tax should destroy a business it would not be made invalid or require compensation upon that ground alone. Those who enter upon a business take that risk. (*McCray* v. *United States*, 195 U. S. 27; See *Quong Wing* v. *Kirkendall*, 223 U. S., 59; *Mugler* v. *Kansas*, 123 U. S. 623; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 482.)

* * * * *

The requirement of uniformity in section 9 is disposed of by what we have said of the classification when considered with reference to the Constitution. The legislature was warranted in treating the making of oil and fertilizer from herring as a different class of subjects from the making of the same from salmon offal. The provisions against taxing in excess of one per centum of the assessed valuation of property does not apply to a license tax like this. This is not a property tax. (*Alaska Pacific Fisheries* v. *Alaska*, 236 Fed. Rep. 52, 61.)

Precedents for the classification made by The Future Trading Act are found in other statutes, the constitutionality of which has been upheld by this court. The oleomargarine statute taxes colored oleomargarine ten cents a pound and uncolored one-fourth of a cent a pound, but imposes no tax whatever on butter, notwithstanding that a large per-

centage of the butter sold is colored artificially. The same oleomargarine which, without color, is taxed one-fourth of a cent a pound, if colored, is taxed ten cents a pound. The addition of the coloring matter does not affect the wholesomeness of the product in the slightest degree. It has exactly the same food value with as without the coloring matter.

The statute taxing sugar refineries excepted farmers and planters grinding and refining their own molasses. All were engaged in the same business and produced the same article, but one was taxed and the other was not.

The statute laying a tax on State bank notes did not tax the notes of national banks.

The phosphorous match statute lays a tax on phosphorous matches but not on other matches.

The Revenue Act of 1898 taxes sales on boards of trade but not sales made elsewhere.

The Future Trading Act taxes (1) puts and calls, etc., which are not contracts, but merely options for contracts, and (2) all contracts of sale of grain for future delivery except (a) those made by the owner or grower and (b) those made by or through a member of a board of trade designated as a contract market. This classification is as clearly and reasonably drawn as that made by any one of the statutes above mentioned.

C. THE TAX IS NOT A DIRECT TAX UPON THE PROPERTY BUT A TAX ON THE PRIVILEGE OF SELLING THE PROPERTY FOR FUTURE DELIVERY.

The only restrictions upon the taxing power of Congress are that direct taxes must be laid and collected by the rule of apportionment (Art. I, sec. 2, clause 3), and that duties, imposts, and excises must be uniform throughout the United States (Art . I, sec. 8, clause 1).

The tax imposed by The Future Trading Act is not a direct tax upon the property. It is a tax upon the privilege of selling the property for future delivery. If no such sale is made, no tax accrues. It therefore is not a direct tax, but an excise or duty levied upon contracts of sale of grain for future delivery.

Nicol v. *Ames* (173 U. S. 509, 519, 520):

> We think the tax is, in effect, a duty or excise laid upon the privilege, opportunity or facility offered at boards of trade or exchanges, for the transaction of the business mentioned in the act. * * * This tax is neither a tax on the personal property sold nor upon the income thereof, although its amount is measured by the value of the property that is sold at the exchange or the board of trade.

Thomas v. *United States* (192 U. S. 363, 371):

> The sale of stocks is a particular business transaction in the exercise of the privilege afforded by the laws in respect to corporations of disposing of property in the form of certificates. The stamp duty is contingent on the

> happening of the event of sale, and the element of absolute and unavoidable demand is lacking. As such it falls, as stamp taxes ordinarily do, within the second class (duties, imposts, and excises) of the forms of taxation.

The uniformity required as to duties, imposts and excises is geographical.

Knowlton v. *Moore* (178 U. S. 41, 106):

> By the result, then, of an analysis of the history of the Constitution, it becomes plain that the words "uniform throughout the United States" do not signify an intrinsic, but simply a geographical, uniformity.

The tax laid by The Future Trading Act is uniform throughout the United States and therefore within the constitutional requirement.

For a hundred years the use of the taxing power has not been limited to the raising of revenue alone, but, through the protective tariff, has been employed to encourage industries in this country. In the application of the tariff, Congress has looked to the "general welfare" of the country, as is done in the case of The Future Trading Act, and not merely to the raising of revenue. In laying a tax, Congress necessarily uses discretion, imposing the burden upon those objects which are least useful or valuable to the public, or perhaps even hurtful to its interests, thereby aiding and encouraging those objects which are of greater use or value to the public. The use of the taxing power to promote the moral welfare of the nation—as the heavy duties on liquors or tobacco—is as old as the taxing power. The tax im-

posed by The Future Trading Act puts the burden upon the least necessary and perhaps the harmful transactions affecting the grain market of the country, and at the same time provides for the making of the transactions necessary to the growers and users of grain. It places a substantial tax on the purely gambling transactions, to wit, puts and calls, etc., but permits unrestricted dealing in cash grain and, to a limited extent, futures throughout the country, and in futures generally, under reasonable conditions, at the important terminal markets. Even though the tax may be heavy enough to cause discontinuance of the present manner of conducting the business, still a reasonable method of preserving the business, and one which Congress believes is for the public welfare, is provided. The price of cash grain is influenced by quotations on the future markets. If, for reasons peculiar to exchange methods and transactions, the price of futures is depressed unduly, as frequently happens, by conditions not in anywise connected with the total available supply of grain or the demand therefor, an indefensible, economic and commercial condition arises, harmful to all persons owning or dealing in cash grain, including not only the farmer, but the grain merchant as well. That the taxing power may be used in this way is well settled.

Bell's Gap R. R. Co. v. *Pennsylvania* (134 U. S. 232, 237):

> We think that we are safe in saying that the Fourteenth Amendment was not in-

> tended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt.

In *Alaska Fish Co.* v. *Smith* (255 U. S. 44, 49) this court upheld the laying of a tax for discouraging the use of an article for a purpose not deemed for the best interests of the public, and said:

> The acts must be judged by their contents, not by the allegations as to their purpose in the complaint. We know of no objection to exacting a discouraging rate as the alternative to giving up a business, when the legislature has the full power of taxation. The case is different from those where the power to tax is limited to inspection fees and the like, as in *Postal Telegraph-Cable Co.* v. *Taylor* (192 U. S. 64, 72).

D. THE FUTURE TRADING ACT IS NOT WITHOUT PRECEDENT.

The United States Cotton Futures Act of August 11, 1916 (39 Stat. 446, 476), lays a tax of two cents a pound on every contract of sale of cotton for future

delivery, but provides that the tax shall not be levied upon any contract of sale if it complies with specified conditions.

The United States Warehouse Act of August 11, 1916 (39 Stat. 486), provides for the issuance of a Federal license to any warehouseman who will agree to comply with the requirements of the act and the regulations thereunder. The regulatory features of these acts arise out of a contractional relation between the applicant and the Government and are, as in the case of The Future Trading Act, wholly permissive.

The Cotton Futures Act, as originally enacted on August 18, 1914 (38 Stat. 693), was attacked as unconstitutional in *Hubbard* v. *Lowe* (226 Fed. Rep., 135, 137) upon the grounds (1) that it made an unlawful discrimination and (2) that, being "a bill for raising revenue," it should have originated in the House instead of in the Senate. It was held unconstitutional on the latter ground. In that case the court said:

> For every reason, therefore, it seems best to first consider the objection to this statute based upon the statement that it is a bill for raising revenue originating in the Senate, and if that objection be "good beyond rational doubt" (*International Mercantile Marine Co.* v. *Stranahan* (*C. C.*), 155 Fed. 428), to go no further. I am perhaps saved from inquiry whether the Cotton Futures Act is a "bill for raising revenue" by the agreement of counsel on this point. They have all asserted that, though every one who has studied the investigations, reports, and

> discussions preceding and producing the passage of the act knows that nothing was further from the intent or desire of the lawmakers than the production of revenue, nevertheless the result of their efforts is a revenue bill within the constitutional meaning.

The law was reenacted on August 11, 1916 (39 Stat. 446, 476), and its constitutionality has not since been questioned. The cotton exchanges elected to comply with it rather than pay the tax. No question has been raised as to the validity of the United States Warehouse Act.

The supertax is not a new device in the history of our legislation. It was as long ago as 1866 applied to the circulation of State bank notes (14 Stat. 146); in 1886, to the sale of artificially colored oleomargarine (24 Stat. 209; 32 Stat. 193), and in 1912, to the manufacture of phosphorous matches (37 Stat. 81). The first of these statutes was sustained in *Veazie Bank* v. *Fenno* (8 Wall. 533), and the second in *McCray* v. *United States* (195 U. S. 27).

Mr. Story is the eminent authority for the view that the taxing power of Congress is not limited to the purpose of raising revenue. In his work on the Constitution, after referring to the several views of the taxing power, he says:

> SEC. 973. So that, whichever construction of the power to lay taxes is adopted, the same conclusion is sustained, that the power to lay taxes is not by the Constitution confined to purposes of revenue. In point of fact, it has never been limited to such purposes by Con-

> gress; and all the great functionaries of the government have constantly maintained the doctrine that it was not constitutionally so limited.

In a preceding section he also says:

> SEC. 965. The language of the Constitution is, "Congress shall have power to lay and collect taxes, duties, imposts, and excises." If the clause had stopped here, and remained in this absolute form (as it was, in fact, when reported in the first draft in the convention), there could not have been the slightest doubt on the subject. The absolute power to lay taxes includes the power in every form in which it may be used, and for every purpose to which the legislature may choose to apply it. This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which nations have been accustomed to apply it. Now, nothing is more clear, from the history of commercial nations, than the fact that the taxing power is often, very often, applied for other purposes than revenue. It is often applied as a regulation of commerce. It is often applied as a virtual prohibition upon the importation of particular articles for the encouragement and protection of domestic products and industry; for the support of agriculture, commerce, and manufactures; for retaliation upon foreign monopolies and injurious restrictions; for mere purposes of state policy and domestic economy; sometimes to banish a noxious article of consumption; sometimes as a bounty upon an infant manufacture or agricultural

product; sometimes as a temporary restraint of trade; sometimes as a suppression of particular employments; sometimes as a prerogative power to destroy competition, and secure a monopoly to the Government.

The title is of very little importance in the construction of an act of Congress and is resorted to only in case of ambiguity. *Hadden* v. *Collector* (5 Wall. 107, 110); *United States* v. *Union Pacific* (91 U. S. 72, 82); *Goodlet* v. *Louisville* (122 U. S. 408); *Patterson* v. *Eudora* (190 U. S. 169); *Cornell* v. *Coyne* (192 U. S. 418); *Wm. Cramp & Sons* v. *Curtis Turbine Co.* (246 U. S. 28).

There is no ambiguity in the Future Trading Act. It consists of two separate and distinct provisions, one, the laying of a tax, and the other, the means of avoiding it. To escape the tax, specified conditions must be observed. But compliance with these conditions is voluntary, not compulsory. There is no room for an argument that the sole purpose of the act is to regulate the grain exchanges and not to raise revenue. The tax feature of the act can stand even though its other features fall, and vice versa.

Congress, by the United States Warehouse Act of August 11, 1916 (39 Stat. 486), provided for the issuance of Federal licenses to warehousemen who agree to conduct their warehouses in accordance with specified requirements. Numerous licenses have been applied for and issued under that act. The consideration to the warehouseman is the advantage accruing to him from the fact that his warehouse is inspected and his business supervised by the Federal

Government. In return for this, he agrees to comply with the provisions of the act. There can be no question as to the constitutionality of the warehouse act.

Congress could lay a tax on the privilege of doing a warehouse business and except warehouses operated under Federal license. The Future Trading Act does no more than this except that the two provisions—the laying of the tax and the means of avoiding it—are combined in one act.

Section 6 (b) does not go beyond the conditions imposed by the Act as an incident to designation, as upon analysis it will be seen that it also is merely one of the conditions with which the contract market must comply in order to retain its designation as such. Congress has not attempted to assume jurisdiction over the individual citizen who violates this section or to impose any direct punishment upon him, but merely says to the contract market, "You must not do business with such person, under penalty of losing your designation." The State is still left free to pass whatever legislation it desires with reference to future trading. Designation as a contract market would not authorize the board of trade or its members to violate any State law. On the contrary, they would have to comply with such law. In the event of conflict between State and Federal law, the board could apply to be undesignated as a contract market. Any failure of the board to comply with The Future Trading Act, caused by compliance with State law, might be ground for undesignating the board.

In *United States* v. *Doremus*, 249 U. S. 86, 92, this court sustained The Narcotic Drug Act of December 17, 1914 (c. 1, 38 Stat. 785, sec. 1) under the taxing power of Congress, and the principles laid down in that case would seem to dispense with further argument in the instant case. In delivering the opinion Mr. Justice Day said:

> This statute purports to be passed under the authority of the Constitution, Article I, section 8, which gives the Congress power "To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."
>
> The only limitation upon the power of Congress to levy excise taxes of the character now under consideration is geographical uniformity throughout the United States. This court has often declared it can not add others. Subject to such limitation Congress may select the subjects of taxation and may exercise the power conferred at its discretion. *License Tax Cases*, 5 Wall. 462, 471. Of course, Congress may not in the exercise of Federal power exert authority wholly reserved to the States. Many decisions of this court have so declared. And from an early day the court has held that the fact that other motives may impel the exercise of Federal taxing power does not authorize the courts to inquiry into that subject. If the legislation enacted has some reasonable relation to

the exercise of the taxing authority conferred by the Constitution, it can not be invalidated because of the supposed motives which induced it. *Veazie Bank* v. *Fenno*, 8 Wall. 533, 541, in which case this court sustained a tax on a State bank issue of circulating notes. *McCray* v. *United States*, 195 U. S. 27, where the power was thoroughly considered and an act levying a special tax upon oleomargarine artificially colored was sustained. And see *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 147, 153, 156, and cases cited.

Nor is it sufficient to invalidate the taxing authority given to the Congress by the Constitution that the same business may be regulated by the police power of the State. *License Tax Cases*, 5 Wall., *supra*.

The act may not be declared unconstitutional because its effect may be to accomplish another purpose as well as the raising of revenue. If the legislation is within the taxing authority of Congress, that is sufficient to sustain it. *In re Kollock*, 165 U. S. 526, 536.

The legislation under consideration was before us in a case concerning section 8 of the act, and in the course of the decision we said: "It may be assumed that the statute has a moral end as well as revenue in view, but we are of opinion that the District Court, in treating those ends as to be reached only through a revenue measure, and within the limits of a revenue measure, was right." *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 402.

IV.

THE FUTURE TRADING ACT MAY READILY BE SUSTAINED AS AN ACT TO REGULATE COMMERCE.

The learned counsel for the appellants has pressed an argument to the effect that the regulatory provisions of the act are not within the commerce power of Congress, and that the board of trade, its members, etc., should all be treated as together constituting an instrumentality which is but an aid to commerce. (Br. 44.)

The learned counsel has invited an argument on the subject of commerce power. We do not concede that it is necessary for the Government to resort in the instant case to the commerce power, although it may be noted that the use of the taxing power to regulate commerce is as old as our institutions. If resort to the commerce power is essential to sustain the validity of The Future Trading Act, the material for it is readily available.

In Board of Trade v. *Christie Grain & Stock Co.* (198 U. S. 236, 247) Mr. Justice Holmes, speaking for the court, said:

> As has appeared, the plaintiff's chamber of commerce is, in the first place, a great market, where, through its eighteen hundred members, is transacted a large part of the grain and provision business of the world.

If Congress should pass an act outlawing entirely "trading in futures" as conducted on the boards of trade in the large commercial centers, there would be legislative and judicial precedents in favor of the validity of its action.

In *Otis* v. *Parker* (187 U. S. 606, 609) the following provision of the constitution of California was assailed, viz:

> All contracts for the sales of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

In sustaining the validity of the provision, this court, speaking through Mr. Justice Holmes, said:

> Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect. If the State thinks that an admitted evil can not be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts can not interfere, unless, in looking at the substance of the matter, they can see that it "is a clear, unmistakable infringement of rights secured by the fundamental law." (*Booth* v. *Illinois*, 184 U. S. 425, 429.) No court would declare a usury law unconstitutional, even if every member of it believed that Jeremy Bentham had said the last word on that subject, and had shown for all time that such laws did more harm than good. The Sunday laws, no doubt, would be sustained by a bench of judges, even if every one of them

thought it superstitious to make any day holy. Or, to take cases where opinion has moved in the opposite direction, wagers may be declared illegal without the aid of statute, or lotteries forbidden by express enactment, although at an earlier day they were thought pardonable at least. The case would not be decided differently if lotteries had been lawful when the fourteenth amendment became law, as indeed they were in some civilized States. (See *Ballock* v. *State*, 73 Maryland, 1.)

We can not say that there might not be conditions of public delirium in which at least a temporary prohibition of sales on margins would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with the opinion. Of course, if a man can buy on margin he can launch into a much more extended venture than where he must pay the whole price at once. If he pays the whole price, he gets the purchased article, whatever its worth may turn out to be. But if he buys stocks on margin, he may put all his property into the venture, and, being unable to keep his margins good if the stock market goes down, a slight fall leaves him penniless, with nothing to represent his outlay except that he has had the chances of a bet. There is no doubt that purchases on margin may be and frequently are used as a means of gambling for a great gain or a loss of all one has. It is said that in California, when the Constitution was adopted, the whole people were buying mining stocks in this way with the result of infinite disaste. (*Cashman* v.

Root, 89 California, 373, 382, 383.) If at that time the provision of the Constitution, instead of being put there, had been embodied in a temporary act, probably no one would have questioned it, and it would be hard to take a distinction solely on the ground of its more permanent form. Inserting the provision in the Constitution showed, as we have said, the conviction of the people at large that prohibition was a proper means of stopping the evil. And as was said with regard to a prohibition of option contracts in *Booth* v. *Illinois* (184 U. S. 425, 431), we are unwilling to declare the judgment to have been wholly without foundation.

In *Chicago Board of Trade* v. *United States* (246 U. S. 231), as shown by the transcript, the Government filed a petition in the District Court against the Chicago Board of Trade, its officers and directors, alleging that, when carried into force and effect by the members thereof, the following rule was in violation of the Sherman Anti-trust Act, viz:

> SEC. 33. A. The board of directors is hereby empowered to establish a public "call" for corn, oats, wheat, and rye to arrive, to be held in the exchange room immediately after the close of the regular session of each business day.
>
> B. Contracts may be made on the "call" only in such articles and upon such terms as have been approved by the "call" committee.
>
> C. The "call" shall be under the control and management of a committee consisting

of five members appointed by the president with the approval of the board of directors.

D. Final bids on the "call" less the regular commission charges for receiving and accounting for such property may be forwarded to dealers. It is the intent of this rule to provide for a public competitive market for the articles dealt in, and that with such market all making of new prices by members of this association shall cease until the next business day.

E. Any transaction of members of this association made with intent to evade the provisions of this rule shall be deemed uncommercial conduct, and upon conviction such member shall be suspended from the privileges of the association for such time as the board of directors may elect.

In answering, the defendants, by the same distinguished counsel who appears in the instant case, made no denial whatever that the transactions were in interstate commerce. On the contrary, the counsel left unchallenged the jurisdiction of the district court and came at once to the merits of the case. In his brief filed in this court on the appeal in that case he made certain verbal criticisms of the form of the injunction decree because it "regulates intrastate trade." But that was not in any sense a challenge of the jurisdiction of the court. Throughout the brief in that case he appears to have assumed that the transactions were in interstate commerce, as he rested his case on the argument that the persons who conducted the transactions

were not engaged in a combination and conspiracy in restraint of trade and commerce in violation of the Sherman Anti-trust Act.

The opinion of this court assumes that the transactions were in interstate commerce and that the parties were engaged in interstate commerce who conducted them. There is no suggestion whatever to the contrary. If the transactions were not in interstate commerce and the parties were not engaged in interstate commerce who were conducting them, the distinguished counsel for appellants in that case who also represents the appellants in the instant case would quickly have made the point.

Moreover, that case has been cited in subsequent cases arising under the Clayton Act but never on the proposition that the transactions referred to therein were not in interstate commerce. (*Standard Fashion Co.* v. *McGrane Houston Co.* 259, Fed. Rep. 793, 798.)

An exchange which deals in the purchase and sale of more grain than the whole world either produces or consumes must have a very real relation to interstate and foreign commerce.

Mr. Justice Brandeis, speaking for the court, said (p. 235):

> Chicago is the leading grain market in the world. Its Board of Trade is the commercial center through which most of the trading in grain is done. The character of the organization is described in *Board of Trade* v. *Christie Grain & Stock Co.* (198 U. S. 236). Its 1,600

members include brokers, commission merchants, dealers, millers, maltsters, manufacturers of corn products, and proprietors of elevators. Grains there dealt in are graded according to kind and quality and are sold usually "Chicago weight, inspection and delivery." The standard forms of trading are: (a) Spot sales; that is, sales of grain already in Chicago in railroad cars or elevators for immediate delivery by order on carrier or transfer of warehouse receipt. (b) Future sales; that is, agreements for delivery later in the current or in some future month. (c) Sales "to arrive"; that is, agreements to deliver on arrival grain which is already in transit to Chicago or is to be shipped there within a time specified. On every business day sessions of the board are held at which all bids and sales are publicly made. Spot sales and future sales are made at the regular sessions of the board from 9.30 a. m. to 1.15 p. m., except on Saturdays, when the session closes at 12 m. Special sessions, termed the "call," are held immediately after the close of the regular session, at which sales "to arrive" are made. These sessions are not limited as to duration, but last usually about half an hour. At all these sessions transactions are between members only; but they may trade either for themselves or on behalf of others. Members may also trade privately with one another at any place, either during the sessions or after, and they may trade with nonmembers at any time except on the premises occupied by the Board.

In *Dahnke-Walker Milling Co.* v. *Bondurant*, No. 30, Supreme Court, October term, 1921, decided December 12, 1921, Mr. Justice Van Devanter, in delivering the opinion of the court, said:

> The commerce clause of the Constitution, Article I, section 8, clause 3, expressly commits to Congress and impliedly withholds from the several States the power to regulate commerce among the latter. Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. (*Brown* v. *Maryland*, 12 Wheat. 419, 446–447; *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 519.) On the same principle, where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. (*American Express Co.* v. *Iowa* 196 U. S. 133, 143.) This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton* v. *Missouri* (91 U. S. 275, 280): "'Commerce' is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of

commodities." In *Kidd* v. *Pearson* (128 U. S. 1, 20) it was tersely said: "Buying and selling and the transportation incidental thereto constitute commerce." In *United States* v. *E. C. Knight Co.* (156 U. S. 1, 13) "contracts to buy, sell, or exchange goods to be transported among the several States" were declared "part of interstate trade or commerce." And in *Addyston Pipe & Steel Co.* v. *United States* (175 U. S. 211, 241) the court referred to the prior decisions as establishing that "interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale, and exchange of commodities." In no case has the court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last.

The President of the United States by his communication to the Federal Trade Commission first set in motion the machinery to investigate and remedy the intolerable conditions which The Future Trading Act was designed to correct. The report of the Federal Trade Commission to Congress was the link which joined the forces of the President and the Congress and resulted in further extensive hearings

before the committees of both House and Senate. Therefore, The Future Trading Act is the result of the united efforts of both the Executive and Legislative Departments of the Government, and the weight of the two is now squarely back of it.

Laden with that burden the learned counsel finds little hope for relief in the Judicial Department for in the concluding paragraph of his brief, in this the Court of last resort, he is driven to the extreme of arguing that the court should make inapplicable to section 3 its many decisions that an improper motive of Congress will not be inferred from the size of the tax alone. He further argues that he is entitled to a decree at the hands of this court that section 3 of the act, as well as the other sections, must be regarded as regulatory in character and beyond the power of Congress. In short, he asks that The Future Trading Act be adjudged unconstitutional and void in its entirety.

This court will defer a long time before it holds unconstitutional an Act of Congress based on such a history of "trading in futures" as underlies The Future Trading Act, the purpose of which was designed to correct evils in the marketing system, such as—

(a) Market manipulation by large operators;

(b) Promiscuous and unrestricted speculation in foodstuffs;

(c) Dissemination of false crop information;

(d) Gambling in indemnities or "puts" and "calls";

(e) Arbitrary interference with law of supply and demand;

when such an act is amply justified under either the taxing power or the commerce power of the Congress, which harms no one, is designed to promote legitimate trading in many of the great necessities of life, and which will be complied with by the Chicago Board of Trade and other similar organizations the instant this court lifts its injunction order.

V.

CONCLUSION.

The preliminary injunction heretofore issued by this court should be dissolved and the decree of the District Court dismissing the bill should be affirmed.

James M. Beck,
Solicitor General.

Blackburn Esterline,
Special Assistant to the Attorney General.

R. W. Williams,
Solicitor, Department of Agriculture.

Fred. Lees,
Assistant to Solicitor, Department of Agriculture.

January, 1922.

Appendix A.

AN ACT Taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes.

Be it be enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be known by the short title of "The Future Trading Act."

Sec. 2. That for the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person" shall be construed to import the plural or singular and shall include individuals, associations, partnerships, corporations, and trusts. That the word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery," as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

SEC. 3. That in addition to the taxes now imposed by law there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each and every privilege or option for a contract either of purchase or sale of grain, intending hereby to tax only the transactions known to the trade as "privileges," "bids," "offers," "puts and calls," "indemnities," or "ups and downs."

SEC. 4. That in addition to the taxes now imposed by law there is hereby levied a tax of 20 cents a bushel on every bushel involved therein, upon each contract of sale of grain for future delivery except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners or growers of grain, or of such owners or renters of land; or

(b) Where such contracts are made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a memorandum in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery, and provided that each board member shall keep such memorandum for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the

United States Department of Agriculture or the United States Department of Justice.

SEC. 5. That the Secretary of Agriculture is hereby authorized and directed to designate boards of trade as "contract markets" when, and only when, such boards of trade comply with the following conditions and requirements:

(a) When located at a terminal market upon which cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the difference in value between the various grades of grain, and having recognized official weighing and inspection service.

(b) When the governing board thereof provides for the making and filing, by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be re-

quired to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof prevents the dissemination, by the board or any member thereof, of false, misleading, or inaccurate report, concerning crop or market information or conditions that affect or tend to affect the price of commodities.

(d) When the governing board thereof provides for the prevention of manipulation of prices, or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof admits to membership thereof and all privileges thereon on such boards of trade any duly authorized representative of any lawfully formed and conducted cooperative associations of producers having adequate financial responsibility: *Provided*, That no rule of a contract market against rebating commissions shall apply to the distribution of earnings among the bona fide members of any such cooperative association.

(f) When the governing board shall provide for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) section 6 of this act.

SEC. 6. That any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with

a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing. *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified

and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) That if the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifiying a day and place not less than three days after the service thereof, requiring such person to show cause why an

order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman, or to any member

thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. That the tax provided for herein shall be paid by the seller, and such tax shall be collected either by the affixing of stamps or by such other method as may have been prescribed by the Secretary of the Treasury by regulations, and such regulations shall be published at such times and in such manner as shall be determined by the Secretary of the Treasury.

SEC. 8. That any board of trade that has been designated a contract market, in the manner herein provided, may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein, as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets.

From and after the date upon which the vacation became effective, the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 9. That the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade and may publish from time to time, in his discretion, the result of such investigation, and such statistical information gathered therefrom, as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person, and trade secrets or names of customers: *Provided,* That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary, relative to the conduct of any board of trade, or of the transactions of any person found guilty of violating the provisions of this act under the proceedings prescribed in section 6 of this act: *Provided further,* That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together

with information on supply, demand, prices, and other conditions, in this and other countries that affect the markets.

SEC. 10. That any person who shall fail to evidence any such contract by a memorandum in writing, or to keep the record, or make a report, or who shall fail to pay the tax, as provided in sections 4 and 5 hereof, or who shall fail to pay the tax required in section 3 hereof, shall pay in addition to the tax a penalty equal to 50 per centum of the tax levied against him under this act and shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 11. That if any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 12. That no tax shall be imposed by this act within four months after its passage, and no fine, imprisonment, or other penalty shall be enforced for any violation of this act occurring within four months after its passage.

SEC. 13. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, tele-

phones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this act in the District of Columbia and elsewhere, and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved August 24, 1921.

Appendix B.

AN ACT to incorporate the Chicago Board of Trade.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the persons now composing the Board of Trade of the City of Chicago are hereby created a body politic and corporate, under the name and style of the "Board of Trade of the City of Chicago"; and by that name may sue and be sued; implead and be impleaded; receive and hold property and effects, real and personal, by gift, devise, or purchase; and dispose of the same by sale, lease, or otherwise; said property so held not to exceed at any time the sum of $200,000; may have a common seal, and alter the same from time to time, and make such rules, regulations, and by-laws from time to time, as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Sec. 2. That the rules, regulations, and by-laws of the said existing board of trade shall be the rules and by-laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said association, known as the "Board of Trade of the City of Chicago," shall be the officers of the corporation hereby created until their respective offices shall regularly expire or be vacated, or until the election of new officers, according to the provisions hereof.

SEC. 3. The officers shall consist of a president, one or more vice presidents, and such other officers as may be determined upon by the rules, regulations, or by-laws of said corporation; all of said officers shall respectively hold their offices for the length of time fixed upon by the rules and regulations of said corporation hereby created, and until their successors are elected and qualified.

SEC. 4. The said corporation is hereby authorized to establish such rules, regulations, and by-laws for the management of their business and the mode in which it shall be transacted as they may think proper.

SEC. 5. The time and manner of holding elections and making appointments of such officers as are not elected, shall be established by the rules, regulations, or by-laws of said corporation.

SEC. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the rules, regulations, or by-laws thereof.

SEC. 7. Said corporation may constitute and appoint committees of reference and arbitration, and committees of appeals, who shall be governed by such rules and regulations as may be prescribed in the rules, regulations or by-laws, for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the association, or by other persons, not members thereof, the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses, and issue subpœnas and attachments, compelling the attendance of witnesses, the same as justices of the peace, and in like manner directed to any constable to execute.

SEC. 8. When any submission shall have been made in writing, and a final award shall have been rendered, and no appeal taken within the time fixed by the rules or by-laws, then on filing such award and submission with the clerk of the circuit court an execution may issue upon such award, as if it were a judgment rendered in the circuit court; and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

SEC. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the president or secretary is hereby authorized to administer such oaths of office as may be prescribed by the by-laws or rules of said corporation; said bonds shall be made payable and conditioned as prescribed by the rules or by-laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

SEC. 10. Said corporation shall have the power to appoint one or more persons, as they may see fit, to examine, weigh, measure, gauge or inspect flour, grain, provisions, liquors, lumber, or any other article of produce or traffic commonly dealt in by the members of said corporation, and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such articles shall be evidence between buyer and seller of the quantity, grade or quality of the same, and shall be binding upon the members of said corporation or others interested, and

requiring or assenting to the employment of such weighers, measurers, gaugers or inspectors; nothing herein contained, however, shall compel the employment by anyone of any such appointee.

SEC. 11. Said corporation may inflict fines upon any of its members, and collect the same for breach of its rules, regulations or by-laws; but no fine shall exceed $5. Such fines may be collected by action of debt before a justice of the peace in the name of the corporation.

SEC. 12. Said corporation shall have no power or authority to do or carry on any business, excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided for in the foregoing sections of this bill.

Approved, February 18, 1859.

Appendix C.

Department of Agriculture,
Washington, January 4, 1922.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the original application of the Chicago Board of Trade for designation as a "contract market" under "The Future Trading Act," and the original designation of said Board as a "contract market" by the Secretary of Agriculture, on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Department of Agriculture to be affixed on the day and year first above written.

[SEAL.] Henry C. Wallace,
Secretary of Agriculture.

To The Honorable Henry C. Wallace,
Secretary of Agriculture of the United States.

The Chicago Board of Trade respectfully represents that it is a corporation created by a State charter granted to it on the 18th of February, 1859, and has since that date operated and maintained in the city of Chicago a Board of Trade whereupon its members buy and sell grain for future delivery.

That it is located at a terminal market (the city of Chicago) where cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of grain and the difference in value between the various grades of grain, and that said terminal market also has recognized official weighing

and inspection service, that is to say, the Board of Trade is by its charter authorized to appoint one or more persons to weigh grain and other articles, and its rules authorize the creation of a weighing department, and it has for many years maintained, and now maintains a weighing department, and has prescribed sundry regulations for the control thereof, and the State of Illinois has, by statute, established and maintains an official staff, consisting of one chief inspector and sundry deputy inspectors, whose duty it is to inspect and grade all grain coming to the Chicago market.

That it is prevented from modifying its rules and by-laws in respect to making and filing, or requiring any of its members to make or file, any reports required by Section 5 of The Future Trading Act, and is also deterred from admitting to membership any representative of any cooperative association of producers as required by Section 5, sub-clause (e), by an order of the Supreme Court of the United States entered on December 12, 1921, during the pendency in that court of a suit to test the constitutionality of said Future Trading Act, in which John Hill, jr., and others are appellants, and Henry C. Wallace as Secretary of Agriculture, and others, are appellees, as will more fully appear by a copy of said order hereto attached.

That it has duly adopted the following amendments to its existing rules:

"SECTION 2. No member shall disseminate any false, misleading, or inaccurate report concerning crop or market information or conditions that affects or tends to affect the price of commodities, and any member who shall knowingly or carelessly disseminate such report shall be suspended by the Board

of Directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SECTION 3. No member shall attempt to manipulate prices of commodities, nor corner or attempt to corner any grain, and any member who shall knowingly or intentionally violate the provisions of this Section shall be suspended by the Board of Directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SECTION 4. The Board of Directors is authorized to take such other steps as may be necessary or advisable to make effective sub-divisions (c) and (d) of Section 5 of The Future Trading Act.

"SECTION 5. Any member who, under sub-clause (b) of Section 6 of said Future Trading Act, shall be deprived of the privilege of trading in contract markets, shall be suspended from all privileges of trading on the exchange of this Association for such period as may be specified in the order of the Secretary of Agriculture against such member.

"Any member who shall accept, or execute, an order from any person who shall have been deprived of the privilege of trading in contract markets, shall be suspended from all privileges of membership in this Association for such time as the Directors, in their discretion, shall determine."

and desires to be designated temporarily, and during the pendency of said bill in said court and for twenty days after the final decree therein, a contract market as contemplated and authorized by said order.

Your petitioner accompanies this petition with a copy of its rules and the list of its members and copies of forms of contracts and confirmations used by its members in transactions on its exchange.

WHEREOF, your petitioner asks to be temporarily designated as a contract market for and during the pendency of said bill and for twenty days after the final decree therein.

BOARD OF TRADE OF THE
CITY OF CHICAGO,
(Signed) By JOSEPH P. GRIFFIN,
Its President.
(Signed) JOHN R. MAUFF,
Its Secretary.

STATE OF ILLINOIS, } *ss.*
COUNTY OF COOK, }

JOHN R. MAUFF, being duly sworn, says that he is the Secretary of the Board of Trade of the city of Chicago, and that he has read and knows the contents of the foregoing petition, and knows that the same is true of his own knowledge.

(Signed) JOHN R. MAUFF.

SUBSCRIBED and sworn to before me this 19th day of December, 1921.

(Signed) JOHN A. AITKINS,
Notary Public.

Pursuant to the authorization and direction contained in an Act entitled "An Act Taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes," Public No. 66, 67th Congress, known by the short title of "The Future Trading Act," and an order of the Supreme Court of the United States entered on the 12th day of December, 1921, upon the appeal in the case entitled *John Hill, jr., et al.* v. *Henry C. Wallace*

et al., No. 616, I, Henry C. Wallace, Secretary of Agriculture, hereby designate the Board of Trade of the City of Chicago, Chicago, Illinois, as a "Contract Market" under said Act, said Board of Trade having applied for, and having otherwise complied with the conditions and requirements of said Act as a prerequisite to, such designation, except as restrained therefrom by said order of the Supreme Court of the United States. Said Board of Trade is so designated for the period only of the pendency of said appeal in said Court and twenty days after the final decree therein, and said designation is subject hereafter to suspension or revocation in accordance with the provisions of said Act, except as otherwise provided in said order of the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 21st day of December, 1921.

HENRY C. WALLACE,
Secretary.

APPENDIX D.

STATEMENT OF SENATOR ARTHUR CAPPER, UNITED STATES SENATE, AUGUST 9, 1921, ON THE PROVISIONS OF THE FUTURE TRADING ACT.

Mr. CAPPER. Mr. President, it is nothing new that we hear to-day from the producers of food, from grain dealers and millers, and from the victims of speculation carried on without restriction, of the abominations of speculation in these basic products. It has been heard again and again, though this is the first time a bill has come to a vote in the Senate. But the Senate and the other branch of Congress again and again have had their attention called to this thing and inquiries have been held and hearings given at which over and over it has been charged and admitted that gambling constitutes a great part of all the business transacted on these exchanges. It is an immoral practice. But we are attempting to correct it in this bill, not merely because of its immoral character and influence but because of its arbitrary interference with economic laws and its disturbance of the balance that demand and supply of commodities when left to itself brings about. This great law of nature has always appealed strongly to the sense of justice in all men. Anything that tends to destroy or frustrate this great democratic law of nature, any combination or any distorted mechanism of trade is offensive to the sense of common justice and fair dealing which all men, and certainly we as Americans, cherish.

During the past year the price of wheat and corn has been determined to a large extent not by the demand and supply of the commodity itself but by the fabulous quantities sold on the exchange that never had any existence, that no grain farmer in the world ever planted, ever toiled over its cultivation and harvest, or offered for sale. I claim in behalf of this bill that its sole purpose is to eliminate from the exchanges exactly those operations that do not conform to a market place where prices are determined in accordance with the law of demand and supply. The defenders of these practices of gigantic speculation and gambling do not deny the practices; they rest on the proposition, which in the long run is undoubtedly correct, that speculation can not overcome the law of demand and supply. We admit that it can not. But we know that temporarily, at least, the fictitious demand or fictitious supply created by gambling deals on the exchanges distorts true demand and supply and creates a false price; that it causes, and during the past year has caused, violent and unnatural fluctuations; and that when wheat and corn came on the market a year ago the resumption of options dealing was immediately followed by such an orgy of gambling operations as to drive prices within a period of months far below the cost of production.

Mr. President, when trading in wheat futures was resumed in July of last year, after more than two years of its suspension as a war measure, the "traders" of the Chicago Board of Trade began a great "bear" raid. This bear raid was maintained for nearly 10 consecutive months in the face of the greatest export demand for wheat this country ever experienced. When this raid began December futures

opened at $2.75 per bushel. Before it ended the farm price of cash wheat in the grain belt had fallen to 85 cents a bushel.

While this steady decline and tremendous fall of wheat prices was going on during the old crop year ending in June this country established new high records for wheat exports, measured both in dollars and in bushels.

I offer these and other facts as my indictment of the grain gambler. His own market statistics convict him. The Chicago Board of Trade pleads guilty to his evil practices and promises, as it often has before, to abate them. On behalf of national welfare, on behalf of fair dealing and honest markets, I ask that the Nation's lawmakers put an end to this great evil.

The purpose of this bill, Mr. President, is to correct some of the evil practices of the professional speculators on the grain exchanges and to authorize supervision of the grain-futures markets, but not to disturb any of their legitimate and useful functions. It will not put any curb upon free and unlimited hedging by elevator companies, exporters, millers, and other manufacturers of grain products.

Briefly summarized, the evils in the marketing system which this bill undertakes to correct are:

(a) Market manipulation by large operators.

(b) Promiscuous and unrestricted speculation in foodstuffs.

(c) Dissemination of false crop information.

(d) Gambling in indemnities or "puts" and "calls."

(e) Arbitrary interference with law of supply and demand.

That these evils exist and should be eliminated is not challenged. They all grow out of dealings in

futures. The bill does not touch any transaction in cash grain, for it is expressly provided in the definition section that it shall not include any cash grain or deferred shipment.

The plan of the legislation for correcting the evils is that future transactions shall be engaged in only on certain boards of trade, as, in fact, they now are. It then places the duty upon the boards of trade to correct the evils. It does not tell them how to do it. Their past experience has shown that they know how to do it. Their representatives agree that they will undertake to do it, and really all the legislation does is to compel them to do, under supervision of the Secretary of Agriculture, that which they say they ought to do and ought to have done a long while ago.

Every reasonable suggestion for safeguarding the machinery of the trade has been incorporated in the bill now before the Senate. Let me repeat that the bill does not concern itself at all with the sale or purchase of actual grain, either for present or future delivery. The entire business of buying and selling the actual grain, sometimes called "cash" or "spot" business, is expressly excluded. It deals only with the "future" or "pit" transaction, in which the transfer of actual grain is not contemplated. This legislation does not destroy the hedge; but on the contrary its object is to improve the hedge. It is not a regulation of business in the sense in which that term is usually employed.

What it does, very roughly, is this: It says to the eight boards of trade:

"Your body, if it wishes to deal in futures, must prevent the artificial manipulation of prices; you must prevent the circulation by your members of

false reports as to crops or markets; you must abolish the most vicious and harmful forms of pure gambling."

It vests in a board of three Cabinet officers the power, not of regulation, but of supervision; the power to see that the boards do correct the abuses; and if they do not, these Cabinet officers have the power, subject to court review, to suspend the offending trader or, as a last resort, the board itself from the privileges of trading in futures.

DOES NOT INTERFERE WITH LEGITIMATE GRAIN TRADE.

Let me repeat that the bill does not interfere with any legitimate function of the board of trade. What it does, in brief, is this:

First. It specifically permits dealing in futures by providing that such dealing shall be carried on in certain markets. At present there are eight markets in which facilities are provided for future trading. All of them are located at terminal markets. The measure provides that the Secretary of Agriculture shall designate such boards of trade as "contract markets." It will be observed that no discretion is lodged in the Secretary of Agriculture, but that he is "directed" to designate such boards as meet the requirements as contract markets. If he refuses, he can be compelled, by mandamus, to make the designation.

Second. As a check on the evil of manipulation, the bill requires future contracts to be evidenced by memorandum in writing. It requires that the governors of the boards of trade shall direct members to make and file reports of such future transactions. It makes such records availab e to the inspection of the Department of Agriculture and the Department of Justice. At the present time no one can tell from the

records what part of the trades in futures are speculative and what part are bona fide hedges. No one should object to this provision except the manipulators. Secrecy is necessary to the manipulator of the market, which is probably the reason the Chicago Board of Trade keeps no records. If a big manipulator undertakes to "bear" the market and the whole world knows he is doing it, he is the loser.

Third. The bill requires the boards of trade to use diligence in preventing the dissemination of false crop reports by its members.

Fourth. The bill requires that the privilege of dealing in futures shall be withdrawn from any board of trade unless it enforces rules which will prevent manipulation. Any manipulation of the market would mean the closing of its future trading business.

The bill then vests with the Secretary of Agriculture power, subject to court review, to investigate an individual member who is charged with disseminating false crop reports or manipulating prices, and, upon finding that such individual has been guilty of such practices, to suspend him from the trading privileges of contract markets. This is subject to court review. It then provides that in case a board of trade itself is not using reasonable diligence to correct these abuses a commission of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General may suspend its designation as a contract market, subject to a review by the courts.

Publicity is a true precautionary measure in reference to public markets, as it is in many other things. Section 5 of the bill is not an inquisitorial interference with the free course of trade, but merely a sanitary provision calculated to purify the atmos-

phere of the grain pits and to admonish speculators and gamblers of the right of government to protect the public and legitimate commerce from the abuses on these exchanges. I believe that the effect of this section will be salutary and that the requirement that records shall be made and kept on file of every transaction from its start to final completion will of itself greatly tend to deter big and little gamblers from attempting to interfere by their operations with the markets.

There are three additional provisions which should be noted. They are:

First. The taxing out of existence indemnities or puts and calls. Every representative of the board of trade before the committee admitted their evil and approved of their prohibition. A "put" is an option for a contract of sale; a "call" is an option for a contract of purchase. The consideration of the option is a dollar a thousand bushels. If the market closes to-day at $1.30, I may go to a dealer in Chicago and buy of him a "call." He fixes the "call" price. This "call" price is a fixed amount over the close of to-day's market. If it is a stable market, it may be 5 cents over to-day's market; if a fluctuating market, it may be 10 cents. Let us assume that he fixes the call price at 5 cents over to-day's market, or $1.35. The call is only good for the next day's market. The result of the transaction, then, is this: If the market to-morrow closes at $1.35 or over, I can exercise my option and compel the dealer to sell to me the wheat covered by the call at the call price. If it does not reach that point, I have lost the money paid for the option. The abuses to which this transaction are put are many and the good it does is so remote and theoretical that all agree that they should be abolished.

Second. By amendment made in the House, the bill provides that contract markets shall permit cooperative associations of producers to membership. A great storm has waged over this provision, but I think it is one of the most commendable features of the bill. The boards of trade say that cooperative associations are now welcome to membership, and, in fact, such associations are members of one or two of the boards of trade. The boards of trade, however, have a rule which prohibits rebating or splitting of commissions. They have never permitted a cooperative association to become a member unless that association distributed its profits upon the basis of the capital invested by its members. Most cooperative associations distribute their profits not upon the basis of capital invested, but upon a patronage or earning basis; that is, the more wheat a man sells through an association the greater his share of the profits, without reference to the man who has contributed to its capital. This, the boards of trade insist, is equivalent to a rebating of commissions; but I do not agree with them. If the cooperative system of marketing can handle the grain more economically or more satisfactorily, it will in time prevail despite any obstacle that may be placed in its way. Whether the cooperatives can or can not do this, time alone will tell. In the meantime, they should be encouraged and should be given an even chance. It does not seem to me that it is a matter in which the boards of trade are interested, and that they could well afford to welcome them to membership and give them a chance to show that they can do the business more efficiently than it is being done at present.

Third. The bill as originally introduced in the Senate by myself, and in the House of Mr. Tincher,

provided for the elimination of so-called private wires. This was stricken out in the House and has been reinserted by the Senate committee.

Mr. President, it is against the law to run a gambling house anywhere within the United States. But to-day, under the cloak of business respectability, we are permitting the biggest gambling hell in the world to be operated on the Chicago Board of Trade. The grain gamblers have made the exchange building in Chicago the world's greatest gambling house. Monte Carlo or the Casino at Habana are not to be compared with it.

More than 500 private-wire houses have direct connection with the Chicago Board of Trade, according to the Federal Trade Commission, and it costs $3,000,000 a year to maintain them. Then come the wire systems of the Chicago brokerage houses, which seek speculative business where they may. One such system has 66 branches in 19 States. Eight years ago it had only 33. The mileage of the private-wire systems of Chicago Board of Trade members having offices in Chicago exceeds 106,000 miles.

This shows how the gambling game is growing.

The extent and completeness of its system for rounding up suckers explains how the Chicago Board of Trade must "sell" more grain every year than the entire globe produces. Approximately from eighteen and a half to twenty billion bushels of grain are sold at Chicago annually at a value ranging from fifteen to more than twenty billions of dollars.

The private-wire houses reap fortunes from the gambling in futures. A single house will in three days sell as much grain as can be delivered on the

futures market in a year. When their wires are not otherwise engaged, they are used for transmitting faked or exaggerated statements of market conditions to get the little fellows into the game for the sake of the commission revenue.

Mr. President, the small gambler in futures has no more chance to win than the small gamester in a gambling house where they use marked cards and loaded dice.

In its constant search for victims to play the market the Chicago Board of Trade does more fishing than goes on in all the Seven Seas. Every week day it casts its net over the United States and Canada. Every night it is drawn in. You can hardly imagine the extent of the catch. Some recent instances are impressive.

One is the admitted embezzlement of $1,187,000 by R. J. Thomson, comptroller of the Minnesota firm of packers, the George A. Hormel Co. Thomson is credited with losing a part of this huge sum in operations on the Chicago Board of Trade.

Another is the closing of the Arcola (Ill.) State Bank and the arrest of its president and cashier, father and son, for a shortage of $400,000, due to losses in the Chicago grain pit.

Still another instance is found at Prophetstown, one of the largest grain centers of Illinois. Prophetstown's most prominent citizen and bank president, George E. Paddock, is now a fugitive from justice at the age of 72. His son, the bank's cashier, indicted with him for embezzlement of $150,000 of depositors' funds, has recently given himself up to the sheriff. Behind the bank room proper examiners found a secret chamber with direct wire connections to Chicago brokerage houses.

F. R. Robertson, prominent real estate and insurance man of Newton, Ill., in a fit of insanity caused from brooding over losses on the Chicago Board of Trade, shot and killed Charles Sutton, member of a grain brokerage firm, then killed himself.

When a cashier of the city treasury at Boston was appointed treasurer the other day, it was discovered he was short $40,000. He had lost it in grain market speculation expecting every day to win.

An Omaha grain operator named Rothschild, with offices at Omaha and St. Louis, staked his all in the Chicago Board of Trade's gambling game and lost, then turned on the gas and died.

A widow at Topeka, Kans., is suing to recover $35,000 lost in grain speculation last spring. A bookkeeper in a grain operator's office tells me the country would be shocked if it knew how many women were "playing the market."

At Corning, Kans., only a few weeks ago, after using the money of others in market flyers, and losing it, E. A. Miller, manager of the Farmers' Elevator Co., took strychnine when exposure came, ending his hopeless efforts to win back these losses.

Elevator managers, I am told, are particularly susceptible to the grain-gambling mania. At one of our hearings A. L. Middleton, member of a farmers' cooperative elevator company at Eagle Grove, Iowa, testified that so many elevator managers had gone wrong in Iowa that his company had instructed its manager not to use the "hedge" except when requested to by vote of the directors.

This country is strewn with the financial carcasses of thousands of men who have been ruined in the Chicago grain pit. I have had scores of personal letters citing most pathetic cases. The

almost constant stream of suicides and embezzlements for this cause in the day's news shows that the board of trade gambling game is widespread and claims many victims yearly.

Mr. President, of what use is it to abolish public gambling or to abolish the lottery when an institution is maintained in the small town to which every man is invited to drop in and gamble a few dollars on the grain market? It has been said many times during the hearings before the committee that his chance of winning was not one in twenty. The effect on the market is certainly harmful, for whether it affects the prices up or down it is an unwholesome and artificial market which is thus created.

It has been argued that it is necessary to have the small gambler in the small town to maintain the hedge. I do not believe it; probably half of the representatives of the boards of trade do not believe it and say so. It is a matter not capable of exact proof. I do want to say this, however: It is unbelievable to my mind that the merchandising of the foodstuffs of the country can not exist without a thousand gambling houses scattered all over the country engaged in gambling in the products of the farmer. I do not want my bread any cheaper if my gain comes from the widow who has gambled away her life insurance money, or from the farmer who has gambled away the savings of a lifetime, or from the bank clerk who has gambled himself into the penitentiary.

BOARD OF TRADE WILL NOT CLEAN UP.

Mr. President, probably the strongest argument that can be used at the moment in support of any contention that the grain exchanges should be placed

under Government supervision is to quote the words of the Chicago Board of Trade's president and directors who outlined and described the evils of the trade (Exhibit B, pp. 474–478, hearing before the Committee on Agriculture and Forestry, United States Senate, on H. R. 5676) and, as early as April 12, 1921, promised prompt remedial action by the board of trade. In the same volume, page 485, J. P. Griffin, president, in a letter to Mr. Gates, set "July 25, as the date when the proposed amendments will be enacted into rules," but that date has passed and no report has been made by committees. Apparently the board of trade is making no effort to eliminate the evils which everyone admits exist.

Only yesterday I received a letter from a well-known member of the Chicago Board of Trade in which he says:

" 'Puts' and 'calls' are still rampant and 'private wires' are endeavoring to stave off action until Congress adjourns. To-day, like all business days for years past, Armour is selling all the 'puts' and 'calls' in unlimited quantities that the 'traders' will buy. If he can manipulate the markets to-morrow, so that they will not advance above 'calls' or decline below 'puts' the $10,000 or $20,000 which the farmer, the barber, and the blacksmith has bet with him to-day will be 'velvet.' They call it speculation, but they know and you know it is the cheapest sort of gambling.

"Personally, I visited the wheat pit this afternoon ('puts' and 'calls' are traded in between 1.30 p. m. and 2.30 p. m.) and Armour's representative, George A. Seaverns, was surrounded by anxious buyers of 'puts' and 'calls' on wheat, who were taking them as fast as he could write down the transactions.

In the corn pit I found H. E. Schwarz, another agent, was performing the same service in corn.

"A very large percentage of the membership of the board of trade are criticizing the directors for their failure to keep faith with you gentlemen in Washington, especially in so far as the abolition of "puts" and "calls" are concerned, for every member knows that it did not require the appointment of a committee, nor any delay exceeding 20 days from the date when they declared against further tolerating them, to have utterly abolished 'puts' and 'calls.' All of this spread-eagle stuff is to gain time and quiet any criticism from Washington. In the meantime, Armour is the bookmaker and absorbing the same as a pool room absorbs the suckers' bets which roll in over private wires from every village and hamlet of the great West."

OBJECTIONS TO THE BILL ANSWERED.

Mr. President, what are the objections to the pending measure by the exchanges? First, they say that the law is unconstitutional because of the use of the taxing power. The use of the taxing power for similar purposes has very many times been used by Congress. The cotton futures act is an example. In McRae *v.* the United States (195 United States, 27), the Supreme Court of the United States expressly said that the power of Congress to tax was its broadest power; and that the courts would not inquire into the reason for the use of the power; and in that case they sustained the law, which taxed artificially colored oleomargarine out of existence, when the entire history of the law shows that it was not, in fact, a revenue measure. I am advised by able lawyers that the proposed law is entirely constitutional.

Aside from their objection to the cooperative section, the great burden of the objection of the exchanges is the well-known cry, governmental regulation. I submit for the careful consideration of the Senate that this is not a regulatory measure. It is a measure which points out the evils, and gives the business itself the right and the power to correct them, and vests in the Government only the power of supervision and says to them that they themselves must correct these evils, or the Government will undertake to do it.

The powers conferred by the bill are as follows:

First. The Secretary of Agriculture is directed to designate certain contract markets. These markets which comply with the conditions are entitled to be so designated.

Second. Records of their transactions are required to be preserved for three years "or for a longer period if the Secretary of Agriculture shall so direct." Certainly no bugaboo can be made out of vesting the power with the Secretary of Agriculture to require them to preserve their records for a longer period.

Third. Section 5, subsection B, requires the governing board of the contract markets to provide for the making and filing of reports "in accordance with the rules and regulations and in such manner and form as may be prescribed by the Secretary of Agriculture and whenever, in his opinion, the public need requires it." It will be assumed that if the records maintained are intelligible the Secretary will be satisfied, and that he will never exercise this power unless some member refuses to keep records which are intelligible.

Every other power is vested in the governing board of the exchange themselves. Every subsection of section 5 that places a requirement commences with the words, "When the governing board thereof."

So much for regulation.

When it comes to the matter of enforcing the law, that power must be in some one. It would be absurd to enact a law without providing for its enforcement. Aside from the usual penalty clause two methods are used. One of them was placed in the bill at the suggestion of the exchanges, and that was to provide that in case one member of a board of trade manipulated prices or circulated false reports the Secretary of Agriculture, after a hearing, shall suspend him from the privileges of future trading. The second method is that if a board of trade are not using reasonable diligence in cleaning up their house a commission of three—the Secretaries of Agriculture and Commerce and the Attorney General—may suspend their privilege as a contract market, and both of these are subject to court review.

Mr. President, the principal complaint growing out of governmental regulation is that the power is, in the last analysis, exercised by subordinates. The powers lodged in this bill to a great extent are such that they can not be delegated. No one but the Cabinet members themselves can sit upon this commission in finally passing upon the question as to whether the contract market shall remain in business.

The fact about the matter is that the objection on the ground of regulation will not bear the test of analysis. There is no regulatory power lodged in the bill except the very minor one as to the manner in which records should be kept. The other powers are vested in the governing boards of the exchanges themselves. Powers of enforcement of the law are vested in officials of the Government, subject to court

review, and it is respectfully submitted that powers of enforcement can be lodged nowhere else.

A great many opponents of the measure who appeared before the two committees, representing the grain trade generally, agreed that in view of the storm that has raged about their operations for years some legislation would be helpful to the grain trade. I quote from the statements of some of the representatives of the grain business who appeared before the committees.

The following colloquy occurred between Mr. Julius Barnes and the chairman of the committee, the Senator from Nebraska:

"The CHAIRMAN. I think you will agree there are a good many things going on on the boards of trade that ought to be eliminated if they can be.

"Mr. BARNES. Yes, Senator. My whole emphasis is that the exchanges have clearly made some progress in eliminating those things. Take these spectacular corners of 20 years ago. The business conscience which thought they were smart has entirely altered.

"The CHAIRMAN. Your theory is that it will improve itself if we let it alone?

"Mr. BARNES. Yes.

"Senator KENDRICK. Is it not possible under some conditions that corrective legislation might hasten those things or, even in some cases, it might bring reforms that the exchanges themselves could not possibly reach by their own authority?

"Mr. BARNES. Yes; that is true. I must recognize that."

Mr. Barnes had stated that he believed that if the exchanges were let alone they would correct these evils, and that they were getting better. He was

asked if the gambling in "puts and calls" had not been going on for many years, and he was then asked:

"Senator CAPPER. * * * Have there been any rules and regulations of boards of trade laid down that would tend to eliminate that evil—and everybody admits it is a great evil?

"Mr. BARNES. No. I think that is a fair shot at the exchanges. They should have eliminated that some time ago, because the public sentiment of the exchanges is almost unanimously behind their elimination. You are quite right in pointing out that the exchanges have failed to do that, even after public sentiment has formed, but they will do it.

"Senator CAPPER. I think you will find the same statement made in the testimony that was given 12 years ago that you have made, and that is the only reason why I think there is more pressure back of this legislation at this time than ever before. There is a feeling, I think, on the part of a great many that the time has come when Congress must step in and undertake to do some of these things that the grain trade itself has failed to do.

"Mr. BARNES. Senator, it is because I quite appreciate that that must be the situation—that there is pressure upon your office—that I have made these suggestions in regard to this bill. They are what, I believe, would preserve its constructive features and not make it destructive, although I am opposed to the regulation on principle."

Later on, he said:

"Mr. BARNES. Well you see we are quite in accord as to the desirability of all of the enactments in the bill up to the point of intrusting in some hands the authority to close those exchanges. That, I think, is fatal because it undermines the trading.

"Senator KENDRICK. That could be done with great discretion; I have no doubt about that.

"Mr. BARNES. That is true. If you can alter that so as to put certain safeguards and assurances that it would not have the hasty judgment of any single man, no matter what his office, you have modified that very considerably."

Since Mr. Barnes testified the committee has so amended the bill to meet his objection that the power should not be vested in the hands of a single man.

Mr. Moore, of the Duluth Board of Trade, said, concerning this measure:

"I feel that the spirit back of this proposed legislation means to be constructive and intends to deal fairly with all interests affected. I am not here to object to Government supervision of exchanges, if Congress feels that the public welfare requires it.

"Manipulation is so infrequent and usually obvious when it is in process that the exchanges can easily check it when they see the strong arm of the Government is behind it, with their laws already existing."

Mr. Crosby, of the Crosby Milling Co., of Minneapolis, said:

"Mr. CROSBY. I think, Senator, our objection to the bill is to the feature of governmental control.

"The CHAIRMAN. Do you not want any governmental control?

"Mr. CROSBY. We do not have the slightest objection to supervision."

When Mr. Arnot of the Chicago Board of Trade was on the stand his attention was directed to the evil practices which had been enumerated by Mr. Griffin, the president of the Chicago Board of Trade, to the directors. He was then asked if those evils

had not been embodied in the general principle of this bill. His answer was as follows:

"Mr. Arnot. Yes, sir; I think you are right, Senator. I think they will be covered, but, Senator, there are other things that come up from time to time that might be wrong, some practice for instance, that was never experienced before, which we would want to correct. There is no bill that can cover all of these things that might go wrong on an exchange. However, it is the duty of the men who are there and in touch with conditions to find out and correct those things, and they should be made to do that. That has always been my opinion and is yet. They can do it better with authority back of them than otherwise, but it is up to them to do it."

Mr. Wells, of Minneapolis, summed up his position in a few words:

"Mr. Wells. Mr. Senator, I am not opposed to some legislation on the subject of grain trading or grain exchanges. I do not think any grain exchange opposes some legislation which will make that exchange directly responsible to the Government for the proper conduct of its business. I think what they resent is an interference with the internal operations of the exchange which jeopardizes the operation of the market."

Mr. Wells presented the amendment which the exchanges desired, and then said of it:

"I do believe that under the bill as amended we can function, and I think we would cooperate in every way to make it a success, but to go further and introduce more drastic features I doubt very much whether it would be anything but a case of strangulation—a slow death."

He also said:

"I quite agree with your expression the other day, Senator, that we would gain a certain prestige or gain a certain public confidence if we were directly responsible to some governmental agency.

"Senator CAPPER. I think you said you would be in favor of some kind of legislation?

"Mr. WELLS. I favor a supervision which does not extend to the point of regulation. I favor making accessible to the proper Government authority such information as he may require when the public interests demand it.

"Senator McNARY. If the proposed measure and the amendments that you have submitted this morning were written upon the statute books and became a law, is it your opinion that that law would place such restrictions and difficulties upon the grain markets as to injuriously affect them?

"Mr. WELLS. I believe that if the law as proposed were wisely and fairly administered the grain exchanges could continue to function satisfactorily. I think that temporarily the investing public might avoid the exchanges, but I think they would ultimately come back."

These were all statements made before the Senate committee.

At the time the representatives of the boards of trade appeared before the House committee the bill was in the form in which it was originally introduced in the Senate by myself and in the House by Mr. Tincher. Of the bill as originally introduced, which is in substance the same as the bill now before the Senate, Mr. Wells, of the Minneapolis Board of Trade, speaking before the House committee, said:

"H. R. 2363, the so-called Tincher bill, embodies a great many constructive ideas, and with certain modi-

fications, to make it practical in its operation and to preserve the hedging markets, would, in my judgment, prove constructive legislation."

He also said:

"It is rather significant, and I think will give you a little confidence in the position of the grain trade, to know that there is hardly a provision in the bill H. R. 2363, Mr. Tincher's bill, which has not been covered prior to this hearing and subsequent to the general discussion of this subject by recommendations and resolutions of the boards of directors of the various grain exchanges of this country."

Mr. Griffin, the president of the Chicago Board of Trade, which board of trade, I might say, is the strongest opponent of this sort of legislation, said before the House committee, in opening his remarks, as follows:

"I also concur in the statement of Mr. Wells that the Tincher bill has many elements of a constructive character. In principle, I wish to say to you, I indorse the Tincher bill. In precise detail I believe it needs amendment, largely to meet practical questions."

The original bill also had the indorsement of a number of other representatives of the grain exchanges.

PRICES OF FOODSTUFFS MANIPULATED BY SPECULATORS.

Mr. President, manipulation of the prices of the foodstuffs of the country by individuals for their own profit does exist, and it is conceded by all that it exists. The circulation of false and misleading crop information does exist. The legitimate machinery of the grain business has been prostituted, par-

ticularly in the small towns, to the purpose of pure gambling.

Statistics were presented to our committee, which have not been denied, that during certain periods the speculative market was more than three hundred times as large as the cash market. That is to say, there has been bought and sold in the pit three hundred times as much grain as actually existed, the exact figures being that for every 28 bushels of actual grain available 10,000 bushels have been bought or sold.

The Federal Trade Commission, in its recently published report, finds that future trading in grain amounts some years to more than 20,000,000,000 bushels, or three times all the grain produced in the world, while the actual amount of grain which changes hands at Chicago, where five-sixths of this trading is done, is a small fraction of 1 per cent of these billions of bushels. Transactions last year amounted to fifty-one times the amount of wheat produced in the United States.

That the abuses of the present marketing system should be corrected is not even open to dispute. It is the claim of representatives of the grain business that their correction should be left to the boards of trade themselves without any legislation. It is interesting to note, however, that in hearings before the committee of the House of Representatives 12 years ago, when a similar bill was before that committee, the representatives of the boards of trade admitted then, as they do now, the existence of abuses, but claimed then, as they do now, that the correction should be left to the boards themselves. During the 12 intervening years very little has been done to correct the abuses.

This is not the first time an attempt has been made to correct these abuses. The matter has been before Congress off and on for more than 20 years. It has failed heretofore, in my judgment, because this is the first time that the taxing power has been attempted for that purpose. To undertake to correct the evils by use of the power over commerce or over the mails has been unsuccessful because the transactions are not matters of interstate commerce; and to forbid the use of the mails does not prohibit, but only interferes with their operation and interferes with the legitimate business as well as with the abuse.

Mr. President, in practically all of the Western States and in many of the other States statutes have been enacted which have undertaken to remedy some of the evils, particularly that of promiscuous gambling. The police power, which is reserved to the States, has made that possible. The difficulty with these statutes is that in nearly every instance they prohibit a transaction where delivery is not intended. To prove intention is difficult and the statutes have been avoided by a simple provision in the contract for the future trade, reciting that it is the intention of both parties to make and accept delivery. Moreover, the States can not cure the evil. All that a single State could do would be to force the operators into another State.

Future trading in grain almost exactly as it is carried on in this country was carried on in Germany years ago. In 1896 the Bourse law was passed by Germany, which absolutely prohibited speculation in futures. This was modified in 1900 to permit such trading by members of grain exchanges only. The public in that country was not and is not permitted to speculate in foodstuffs.

The history of this sort of legislation in the Old World, the statutes of our various States, and the many years of study given to the subject by the committees of Congress and of the various departments should be proof enough that evils exist.

For many years there have been complaints of false crop reports. A report will go out to the grain trade that a bountiful rain has assured a tremendous crop in Kansas. The report will be in fact untrue. These became so frequent in 1920 when the great decline in prices occurred that I caused a number of these complaints to be investigated. In nearly every instance the source of such false information was found to be an operator on the "bear" side of the market.

Reports will come out to-day and be contradicted to-morrow. Certainly no harm can come from a requirement, as is found in this bill, that some supervision over reports of crop conditions shall be had, to the end that truth and not falsehoods shall be scattered broadcast.

Manipulation on the "short," or selling, side of the market by big speculators and "bear raids" by their followers, such as happen every year shortly before or immediately following harvest, play directly into the hands of European importers, who are enabled to buy millions of bushels of wheat in the futures market at a reduced price, which they later exchange for cash wheat. On several occasions during this greatest export year for wheat the raiders of the wheat pit depressed the price of the American crop 12 to 14 cents below the world price, below the cheap wheat of South America.

In playing their game the Chicago wheat gamblers sold something they did not possess to bear down the price of something they did not own. They wrecked

the true market, depressed the value of the producer's property, and the big speculators and exporters bought wheat cheaper and cheaper.

Board of trade gamblers make wagers on billions of bushels of grain annually. A single commission house in the Chicago Board of Trade will in three days sell as much grain as can be delivered on the futures market in an entire year. Often an entire crop is "sold" before any of the grain has been harvested. One big market operator was "short" 30,000,000 bushels of corn in December when the price broke 4½ cents. It was a lucky break for the operator, although it subtracted from the value of the corn crop of every State in the Union.

Mr. President, every member of a grain exchange who testified before the Agricultural Committee of the Senate acknowledged that there is at times excessive speculation and undesirable speculation in the futures market. It was brought out that a few big traders at times influence prices—manipulate the market—by the great volume of their operations. Also it was shown that a continually fluctuating, and not a stable, market is the desire of the speculators.

Such a market is against the interests of the producer; he must have stable prices in order to market his crops to the best advantage. The reason for this is that rapidly fluctuating prices can not be fully reflected in the prices paid at country stations, so an additional margin must be allowed when buying in the country, and it comes out of the farmer. Also, when prices are fluctuating as they have done for months past, consignments of grain from country points to the terminal markets are more likely to find the bottom price of the day's range than the top.

Fluctuations benefit the scalper, whether in the pit or at the cash grain tables, but work against the producer.

OPERATORS ADMIT MARKET IS MANIPULATED.

Mr. President, the representatives of the boards of trade who have appeared before the committees of both House and the Senate have been frank to admit that manipulation goes on. In order that there may be no possible doubt that this manipulation of prices exists, I want to read you a few excerpts from the testimony of witnesses before the committees. In doing this I confine myself to the representatives of the grain trade, the boards of trade, who have appeared in opposition to the bill. It appears in practically all of the testimony of all of the witnesses, and it would only be duplication to refer to the testimony of some of the other witnesses before the House committee.

Mr. Julius Barnes, grain exporter and formerly president of the United States Grain Corporation and Wheat Director, in speaking of manipulation, said that the officers of the boards of trade know very well when manipulation is going on and who is doing it. I quote from his testimony:

"Mr. BARNES. Why don't you drive right at the speculator who uses these market facilities?

"The CHAIRMAN. Would we not have to separate his contracts from the others and find out how much he did?

"Mr. BARNES. Yes, Senator; and that would be a hopeless project if you tried to analyze all the trades.

"The CHAIRMAN. Then, how can you drive at him?

"Mr. BARNES. The man who is doing that can be located by the size of his orders and the resources that he has.

"Senator REED. How? Now, you come to the question.

"Mr. BARNES. The exchange authorities themselves know very well by whom and when that is going on.

"Senator REED. Then, the exchange authorities must be able to distinguish between that kind of a deal and other kinds of deals?

"Mr. BARNES. Not the deal. They go at the individual who originates the deals, and by tracing his operations they can tell whether they are of a size and character such as to come within the definition of manipulation. Business conscience to-day condemns the manipulator.

"Senator CAPPER. Is it not a fact that at various times while that bear market was on large operators went on the market and sold wheat in large volume, some of them possibly several million bushels, in the course of a day or two days?

"Mr. BARNES. By common report, and I presume that is correct. It was done, Senator; yes.

"Senator CAPPER. Now, would not that have a tendency to aggravate the situation and to further depress the market?

"Mr. BARNES. Yes; while it lasted.

"Senator CAPPER. And would not that work to the injury, first, of the producer?

"Mr. BARNES. At that time, yes; of course it must be met at some stage by buying an equal weight. They must get those contracts back and induce the buying of equal force. The injustice in that, Senator, lies not so much in that transaction as in the fact, which every reasonable man must admit, that through that process of decline under the influence of those sales some farmer may have his confidence undermined and market his product on the lower basis.

"Senator CAPPER. Does that particular transaction that I spoke of on the part of the Armour Grain Co., for example, who, under the present rules, can go on the market any day and sell five or ten million bushels of wheat, assist in stabilizing the market or maintaining a steady market?

"Mr. BARNES. No; because that is a transaction of great weight under concentrated direction. It is just like any combination, and therefore is not fair, and is a matter which the exchange authorities ought to govern and regulate among themselves. The manipulator is an undesirable factor anywhere. He sometimes injects himself into the business of the exchanges, but not so often as in other businesses, or to such a harmful extent, such as building construction and building materials as recently disclosed."

Mr. Hargiss, the president of the Kansas City Board of Trade, testified as follows:

"You want to know something of the abuses. I must admit to you that I think manipulation is a grave abuse on the exchange when it is indulged in. I think, on the other hand, that practically all manipulations, with few exceptions, have been on the long side of the market."

Upon being asked whether or not manipulation ought to be prevented, Mr. Hargiss answered:

"Oh! absolutely." (S. Res. 275.)

And again, on page 277, he said:

"You could put a very heavy penalty upon manipulation. Personally, I believe if there is not already a Federal statute—I know one man that was indicted for manipulation, I believe, but even a stronger criminal law on manipulation would cure the whole thing."

Mr. Arnot, a member of the Chicago Board of Trade, testified:

"Senator CAPPER. Would it not be a good plan, then, to have some sort of governmental supervision, such as we contemplate in this bill, which will give an impartial Government official the opportunity to see the books on such an occasion as we have in mind here, when we think the market is being manipulated by somebody for the purpose of depressing the price of the farmers' product?

"Mr. ARNOT. I should have absolutely no objection to that."

Mr. Gates, for years president of the Chicago Board of Trade, testified as follows:

"Because the trade recognizes the manipulator as an enemy to the whole organization, to the whole trade, we dislike him just as much as any of you gentlemen do, and if we could find any way of shutting him out absolutely we would be glad to do it. Maybe you can help us on some of these problems."

F. M. Crosby, of the Washburn-Crosby Flour Mills, said:

"We are heartily in sympathy with the elimination of manipulation. A man should not be permitted to deal in these large volumes. If by supervision of the secretary the penalty should fall on that man, I do not think you would have manipulation, at least then."

These quotations are made by the leaders of the opposition to this measure, and they speak for themselves.

Frederick B. Wells, of the Minneapolis Board of Trade, and one of the men in charge of the opposition to this measure, in testifying before the House committee in April of this year, said:

"No; I wanted to eliminate manipulation, and I still want to do that. I do not call it gambling. I call it speculation. I still want to eliminate manipulative speculation; that is, where large money interests can go into a market and temporarily affect the trend of values one way or the other, up or down."

Mr. Griffin, the president of the Chicago Board of Trade, testifying before the House committee, said, in a formal report to his board of directors, which is published on page 157 of the hearings before the House committee, as follows:

"That manipulation of the grain markets has occurred in the past is an admitted fact. Such manipulation, however, has usually been attempted for the purpose of forcing prices upward. Manipulators have been inspired by the belief that it would be possible for them to buy a greater quantity of contract grades of grain than could be delivered at the time and place of delivery for which the contract called. At times such manipulation has been successful; more often it has failed."

It was said a great many years ago that "facts are stubborn things." However persuasive the argument may be that manipulation is possible, and however persuasive the admissions by the members of the boards of trade themselves that manipulation does exist, the most persuasive proof of it is in the actual facts.

VIOLENT FLUCTUATIONS IN THE MARKET.

Mr. President, the system of exchange now conducted by the Chicago Board of Trade is an economic monstrosity. In the business of separating men from

their money without proper return of goods or service, its market manipulators and gamblers are doing that for which hold-up men are sent to prison. No American industry other than agriculture would tolerate such a juggling of markets for a single minute. No other commodity seesaws up or down every day and every hour, month after month, as does the price of wheat on the Chicago Board of Trade. It is a great injustice to the producers of this country and a great injury to the country's welfare, progress, and stability.

I propose to cite you a few instances of fluctuations in the market which, in my judgment, can not be explained by any of the natural and legitimate forces of supply and demand. I cite these instances for two purposes: First, as showing that other forces are at work than the laws of supply and demand, which forces are and must be manipulative in character; and, second, to show that under our system as it now exists the market is unstable. Every witness who appeared at the hearings, on every side of this matter, agreed that a stable market was desirable not only for the producer but for the consumer and for every intermediate handler. The instances which I am about to show are but few of many, and I think it safe to challenge anyone to explain them by any normal play of the forces of supply and demand.

The first of these instances concerns itself with the two weeks commencing July 15, 1920. This was the first two weeks of future trading, or pit transactions, after they were abolished at the commencement of the war. All future transactions in wheat were abolished for three years—from July, 1917, to July 15, 1920. During a part of that time there was governmental control of prices. Governmental control of

prices ended on May 31, 1920. During the six weeks between June 1 and July 15, 1920, there was neither governmental control nor future trading. The extreme fluctuation in prices in that six weeks was 28 cents on any grade and 7 cents on Nos. 1 and 2 grades. This was on the Kansas City market. It was a fairly stable market. Future trading was resumed on July 15, 1920. During the next two weeks the price dropped from $2.75 to $2.10, a break of 65 cents, and worked back to $2.45. In other words, a fluctuation in two weeks of nearly three times the extreme fluctuations of the preceding six weeks.

The exact figures for the Kansas City market for wheat during the six weeks between June 1, 1920, and July 15, 1920, when there was neither a Government price nor a future market, as found in the January and February, 1921, hearings before the Senate committee, are as follows:

"June 1, following the Grain Corporation's control of the grain business of the country, No. 2 hard wheat sold on the floor of the exchange in Kansas City at $2.89 to $2.90 per bushel. The following Monday, June 7, No. 2 hard wheat sold at Kansas City at $2.88 per bushel. Monday, June 14, No. 2 hard wheat sold at $2.85 per bushel; Monday, June 21, No. 2 hard wheat sold at $2.83 per bushel; Monday, June 28, No. 2 hard wheat sold at $2.78 per bushel; Monday, July 6, No. 2 hard wheat sold at $2.81 per bushel; Monday, July 12, No. 2 hard wheat sold at $2.88 per bushel; and on Thursday, July 15, the day future trading was reinstated, No. 2 hard wheat sold on the cash market at $2.88 per bushel and the December option opened in Chicago at $2.75 to $2.72 and closed at $2.70½, or 15½, cents per bushel below the cash."

From these figures it will be observed that from June 1 to July 15 the range in prices on No. 2 hard wheat was only 7 cents per bushel.

Now, if you will turn to the market after July 15, 1920, you will find the following to be the facts still on the Kansas City market:

"Monday, July 19, No. 2 hard wheat sold in Kansas City at \$2.87 per bushel, and the December option in Chicago closed at \$2.51, or 36 cents below the cash. Monday, July 26, No. 2 hard wheat sold in Kansas City at \$2.80, and the Chicago December option closed at \$2.47½. On Monday, August 2, No. 2 hard wheat sold in Kansas City at \$2.28 a bushel, or a decline of 53 cents a bushel in one week, and the December option closed at \$2.13½, or 34 cents per bushel lower than the week previous."

Mr. President, it is difficult to see in the face of these figures, realizing that the wild fluctuation of the two weeks, commencing July 15, was immediately after the stable market ending on the same day, how the facilities for hedging assist in stabilizing the market. Numerous explanations have been made by the representatives of the exchanges to account for this situation. It is probable that the facility of hedging would tend to stabilize the market if there were no outside forces at work, but the fact remains that because of the abuses at which this bill is directed hedging is becoming of little value and the market is not stable.

In part, it was the wild fluctuations following the opening of the future market, compared with the stable condition when there was no future trading, that was the immediate cause for the great wave of discontent that prompted this legislation. On the 1st day of December, 1920, in a single day wheat went down 12 cents and up 10 cents, a fluctuation of 22

cents. On December 2 it went up 17 cents and down 11 cents, and on the 3d it went down 12 cents and up 8 cents. It is impossible to ascribe to any normal and proper force a break in the market of 11 cents and a recovery of 17 cents in three or four hours. The newspapers carried the report that during these three days a half dozen speculators on the Chicago Board of Trade had profits of more than $3,000,000, all of which was at the expense of producer and consumer. If this bill becomes a law, this manipulation of the market will not be possible.

The day the committee reported this bill out of the House the market broke 11 cents. I do not mean to say that this was a punishment visited upon the constitutents of the Congress for their effrontery in undertaking to legislate; I do say that the 11-cent break can not be attributed to supply and demand.

While the committee hearings were in progress the following market situation occurred, as shown by the testimony of Rollin E. Smith, of the Bureau of Markets:

"May wheat, as the result of short selling running into stop orders and causing a loss of confidence as prices declined, was forced down 35 cents in a few weeks. The decline terminated on April 14. Then under the influence of speculative buying an advance started and continued until May 25—a bull market; a wild bull market part of the time. The advance from April 14 to May 25 was 67 cents. Then the price broke 20 cents in two days and advanced 22 cents in two days more, 19½ cents of which was on May 31.

"The net advance of the May future from April 14 to May 31 was 69½ cents. At the same time July

wheat advanced only 35 cents. May wheat was cornered, but let us see what cash wheat did.

"On May 31 Nos. 1 and 2 red and hard winter wheat, the contract grades, sold in the Chicago market at 2 cents under May, or 57 cents over July. No. 3 sold at the fixed discount of 7 cents under Nos. 1 and 2. This was 50 cents over July. No. 4, which is not deliverable on contracts at any price difference, sold at 5 cents under to 5 cents over July.

"On the next day, June 1, after the May future had expired, cash wheat sold as follows: No. 1 red and hard, 20 to 23 cents over July. This was as compared with 57 cents only the day before. No. 2 red and hard, 19 to 21 cents over July; No. 3 red and hard, 15 to 18 cents over July; No. 4 red and hard, 10 to 15 cents over July. This was a drop over night of from 34 to 37 cents for No. 1; 36 to 38 cents for No. 2; 32 to 35 cents for No. 3, but an advance of 10 to 15 cents for No. 4."

In the face of the market in May of this year it can not seriously be said that trading in futures has stabilized the market.

Mr. King. Mr. President, may I interrupt the Senator?

The Presiding Officer (Mr. Ladd in the chair). Does the Senator from Kansas yield to the Senator from Utah?

Mr. Capper. Certainly.

Mr. King. Were the fluctuations in wheat as detailed by the Senator greater than the fluctuations in the prices of other commodities and were they greater than the recorded changes, as shown upon the stock exchanges of various stocks, industrial, railroad, and so forth?

Mr. CAPPER. I have made no inquiry as that phase of the situation, but I think they were. It was very generally stated at the time of the great bear drive on the wheat market that speculators paid attention especially to wheat.

Mr. KING. There is no doubt but what there have been abuses in the grain exchanges which have injuriously affected the agricultural producers of the United States. Any sane and constitutional measure that will prevent a continuation of practices which are evil I shall gladly support. The bill before us may possess some healing virtues; at least it is to be hoped that it may bring some relief. Referring to the violent fluctuations in the prices of stocks, the Senator knows that on the New York Stock Exchange and the various stock exchanges throughout the United States this condition is almost chronic. The rise and fall has been more than 10 points within 24 hours. The rapid advances and recessions in prices have been incredible. Millions have been lost and won within a few hours.

However, in many instances, let me say, the persons who suffered were the gamblers themselves, and it did not affect the intrinsic value of the stocks nor were the railroads or the industrial concerns whose stocks were being gambled with upon the market, affected. I am inclined to think that the $3,000,000 which the Senator said was made by a number of individuals during one day did not come from the farmers but from the "lambs" who were fleeced by the wheat brokers and gamblers. I am inclined to think the little gamblers were swallowed up by the big gamblers, and they were the ones who were compelled to add to the accretions of speculators and gamblers, whose operations were very extensive.

I have been wondering if the evil upon the grain exchanges is greater than on other exchanges, and if

the Government may regulate grain exchanges ought it not regulate all exchanges in the United States, in order that there shall be no stock gambling and no dealing in futures and no dealing in stocks except under the immediate surveillance of the United States Government? Does the Senator think that would be a good thing? I am expressing no opinion one way or the other and am only seeking the view of the Senator.

Mr. CAPPER. I think the Government might very well have supervision over stock markets and exchanges generally to some extent, but first I think we had better start with the grain exchanges because we have the proof there of the harm that is done and the injury that is being worked.

The fluctuations affect the farmer in this way: Every day while that bear raid was on and the market was fluctuating up and down millions of bushels of wheat were going to market. We can not stop, on an hour's notice, or a day's notice, the flow of wheat. The man who reached the market on the day that wheat was down, of course, was the loser. Then the grain dealer or the elevator man or the buyer at the country markets must take into account the possibility of a great fluctuation in the market price, and consequently the price he offers the producer necessarily must be less than he would offer on a stable market. For that reason we are urging conditions that will help to stabilize all the markets.

Mr. WILLIS. Mr. President, while the Senator is yielding, may I say that at some place during or after the Senator's speech I desire to get his opinion touching certain telegrams that have come to me in criticism of the pending measure. I do not desire to inject unfavorable matter into the Sen-

ator's speech at this point if he would prefer to yield at some other point, but I do desire his opinion upon the criticisms that are embodied in two or three of the telegrams which I have received, because I have great confidence in his judgment and the judgment of the Committee on Agriculture and Forestry. Would he prefer that I interrupt at another point?

Mr. CAPPER. Will the Senator wait until I shall have concluded? I shall be through in just a few moments.

Mr. WILLIS. Certainly.

Mr. CAPPER. The plain truth, Mr. President, is that through manipulation of the market the big speculators on the Chicago Board of Trade are undoubtedly a powerful factor in fixing the price of the farmer's wheat. They sell large volumes of wheat futures short during a period before harvest when there is no great volume of buying, and the weight of their selling forces the price down. Then, by continually hammering, they hold the price there until the crop movement begins, when hedging sales place sufficient pressure upon the market to enable the speculators to buy back what they sold without advancing the price. By this process the farmer loses and the speculator wins nine times out of ten. I fear this country will not long continue to produce the finest wheat in the world if we continue to let the wheat gambler fix the price.

VICIOUS PRACTICES OF COMMISSION MEN.

Mr. President, a particularly vicious form which manipulation takes is that indulged in by commission men. By commission men I refer now to those men who place orders for future delivery for their cus-

tomers. As agents for their principals they, of course, must know and do know what trades their customers are making. Every principle of common honesty should prevent these commission men from utilizing this knowledge for their own benefit. What they do is even worse than that; they utilize this knowledge not only to benefit themselves but to benefit themselves at the expense of their customers. They sit by and watch their customers buy and, perhaps, encourage them to buy, and by the force of the buying force the market up; then these commission men, when the price is too high, jump in and break the market, ruin their customers, and make themselves rich. I quote from an article appearing in Wallace's Farmer, under date of February 11, 1921, the article being written by Rollin E. Smith, of the United States Bureau of Markets:

"Speculative commission houses, or commission houses whose members speculate, are one of the big handicaps under which the market is weighted down. It is just as unfair to the public or outside speculators for commission houses to speculate as it is for a poker player to look at the hands of his opponents, for such a commission house knows at all times just how its customers stand on the market. The public has just as much chance of winning as a poker player would if he laid his cards on the table face up. The reason is this: This professional speculator knows from long observation that 95 per cent of the outsiders lose their money. Therefore the professional—in which class are the speculative commission houses, their employees, and the brokers and scalpers in the pit—takes the other side of the market from the outsiders; not in every instance, of course, but in a large general way.

"If, for example, as often happens in a bull market, the public gets the speculative fever and buys heavily, this is of course known to the professionals. As the public becomes more and more excited and continues to buy, the professionals gradually sell out their own holdings and then closely watch for the time when the public buying exhausts itself. That will mean the end of the advance. The public is always craziest right at the top, just when they should be selling and taking their profits.

"When the force in public buying has exhausted itself, the professionals begin to sell short. If the advance is checked, they sell more. Soon the market begins to break, and then the professionals "jump on it"—sell millions of bushels; and a great slump follows. Out of the wreck a few stragglers from the public pull out with a little money left, but 95 per cent of them have left their balances with the speculative commission houses, the brokers, and the scalpers."

These are the manipulations that the bill seeks to prevent.

THE "HEDGE" MUST BE PRESERVED.

By the elimination of these abuses, it is also believed that the hedge will not only be preserved, but will be infinitely better. The foundation of all of the arguments of the grain exchanges is that the hedge must be preserved. They argue that a legitimate hedge is insurance and keeps down the margin between the producer and consumer. It is just as true that a hedge that will not work increases that margin. Where the future market on which the hedge is placed goes down while the cash goes up, the hedge is ruinous. It has been said on good

authority, and after an examination of the trend of the future and cash markets for several years, that 40 per cent of the time the hedge does not work because the cash and future do not run together. I do not vouch for that figure, but it is a statement found in Wallace's Farmer under date of March 18, 1921, the author being Mr. Rollin E. Smith. Take the market in March and April of this year. The cash advanced 65 cents and the future 35 cents during the same period. You can not use the hedge on that kind of a market. In February the cash was 35 cents over the future and in March only 8 cents over the future, and in May the future and cash came together. You can not hedge on that kind of a market. An elevator man or a grain dealer may have contracts to buy wheat in May and on account of the lack of cars or other reasons he is forced to extend the time to his customer so that the wheat is in June. If his hedge has been placed on the May option, it must then be transferred to the July option. On May 31 May wheat closed at Chicago at $1.37½ and July wheat closed at $1.28½.

On May 31 cash wheat sold in Chicago at 57 cents over July wheat. The next day the same wheat sold 20 to 23 cents over July, a break of 34 cents. This is attributed to the fact that there was a corner on May wheat. But you can not hedge on that kind of a market.

This has become of so frequent occurrence that hedging is becoming a dangerous instrument to play with. If the normal forces are left alone, future and cash should go hand in hand. The wild fluctuations of May of this year were because of manipulation by the great operators on the Chicago Board of Trade. It can be stopped and should be stopped.

That it can be stopped, Mr. President, and can be stopped by the boards themselves is proven by this fact: In 1911 the Chicago Board of Trade put in a rule that has practically stopped manipulation of prices upward, sometimes called "corners." This rule is a simple one; roughly, it vests the power in a committee of the board of trade to determine, in case of a corner, what the fair market value of the wheat would have been if there had been no corner. Manipulation of the price upward, or corners, is ruinous to the short sellers upon the boards of trade. The operators upon the boards of trade are victims of corners and they temporarily help the producer. Since the losses by such manipulation fall upon the members of the boards of trade themselves, more than 10 years ago they put in a rule that has stopped such manipulation. Manipulation downward only hurts the producer, the grower of the grain. The boards of trade could prevent such manipulation, as 10 years ago they prevented manipulation upward. One of the purposes of this law is to compel them to do that.

WHAT THE TESTIMONY SHOWS.

Mr. President, if the Members of this body have the opportunity to read the entire record of the hearings before the House committee in January and the same committee in April, and the hearings before the Committee on Agriculture of this body held in May, June, and July of this year, I believe that exactly this will be found to be the situation:

First. The market which governs the price paid to the farmers for their wheat and correspondingly the price paid for foodstuffs by our people in general, while controlled largely and necessarily by the law of supply and demand, is, nevertheless, seriously and

occasionally affected by the manipulation of prices and by promiscuous and unlimited gambling.

Second. These abuses are admitted by everyone, and it is likewise admitted that they should be corrected.

Third. The bodies best able to correct these evils are the exchanges themselves.

Fourth. The most enlightened and the most successful members of those exchanges admit that it would help them to correct the evils if the Government stood behind them.

Fifth. The great body of business men engaged in this business do not object to supervision, nor to punishment if they do not play the game fairly. They do object to governmental regulation.

Sixth. An analysis of the bill will demonstrate that it simply says to the boards of trade, "These are evils; you can correct them; do so; and, if you do not, you can not deal in futures."

The provisions of the bill if enacted into law will deflate gambling and speculation on the exchanges of the land. They will release the law of demand and supply and make these market places subservient to that great law of trade. They will drive out of business thousands of gamblers in puts and calls. They will turn such funds to legitimate uses and the support of industry. They will destroy the infamous influences that, attaching themselves like barnacles to the exchanges of the country, retard legitimate industry and promote vice and too often suicide and crime. And they will protect the producer, whose toil and sacrifice enable all of us to live, from the theft of his well-earned reward by the machinations of professional gamblers, forestallers, and market riggers.

This country exported 365,000,000 bushels of wheat, in the form of wheat and flour, during the 12

months ending June 30 this year. The money value of these exports of wheat was $840,000,000, or $2.30 a bushel. The American wheat raiser averaged something less than $1.30 a bushel, a difference of $365,000,000. This dollar a bushel difference, in the face of such figures, is convincing indication of a prolonged and serious interference with the operation of the great fundamental economic law of supply and demand.

We can not expect to gather grapes from thistles. So long as this juggling of the markets is permitted, and so long as this cancer of gambling in one of the necessities of life is permitted, we can not expect to have permanent prosperity in the United States. For years previous to the present crisis in the agricultural industry the men frequently referred to by orators as the "backbone of the Nation" have averaged barely more than a decent living by working their wives and children as well as themselves, and have realized no return from their capital. The real job we have on our hands is to find out how farming can be made as safely profitable as any other American occupation. Unless that can be done it is simply a question of time when our farmers will be forced to abandon a too hazardous means of livelihood. The one vital industry on which the Nation's welfare and prosperity depend must have its chance to live and prosper if the rest of us expect to, and if it is to have this chance, the grain gambler must go.

In conclusion, Mr. President, I submit this one thought for the serious consideration of this body. There can be no more solemn duty resting upon the Congress of the United States than to preserve to the farmer and the consumer the free play of economic

laws upon the prices which they get for their product and upon the price which the consumer pays for his bread. There is not that free play now. The abuses are certain, definite, and admitted. They can be corrected and will be corrected, if this bill is passed, without Government regulation, but if any situation is serious enough to justify even governmental regulation the measure now before the Senate meets that situation. As now conducted, the Chicago Board of Trade is the most wanton and the most destructive game of chance in the world. The bill now before you is a legislative mandate to these great exchanges, that if they wish to continue to deal in futures without restriction or regulation, they must eliminate from their midst the man who thrives upon the losses of the gamblers in foodstuffs; they must suppress the man who profits by the circulation of falsehoods affecting the price of wheat and bread; and they must drive from their midst the man who is prostituting the machinery of the grain market for his own selfish purpose by manipulating the price to his own advantage. The bill, in my judgment, is constructive legislation, legislation that has been sorely needed for more than a quarter of a century. If I read the public mind aright, the American people have determined to do away with every serious mischief-making evil that affects the general welfare. They have known about market gambling for a long time, thousands have been "stung" by it. They have their minds about made up that the Chicago Board of Trade's poker playing with the food supply is the most wanton, most wicked, and most destructive game of chance in the world, and they are going to stop it.

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